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APPENDIX

(Volume I, Page 1385)

Supreme Court, U.
FILED

MAR 29 1974

RECEIVED, U.S.

IN THE Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1285

WILLIAM B. SAXE, ATTORNEY GENERAL OF THE UNITED
STATES, and NORMAN A. CARLSON, DIRECTOR, UNITED
STATES BUREAU OF PRISONS,

Petitioners

THE WASHINGTON POST Co. and BEN H. BASHKIAN

ON PETITION FOR A WRIT OF HABEAS CORPUS TO THE UNITED
STATES COURT OF APPEALS FOR THE DISTRICT
OF COLUMBIA CIRCUIT

FOR A WRIT OF HABEAS CORPUS FROM FEBRUARY 12, 1974
CIRCUIT COURT OF APPEALS, D.C.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1265

WILLIAM B. SAXBE, ATTORNEY GENERAL OF THE UNITED STATES, and NORMAN A. CARLSON, DIRECTOR, UNITED STATES BUREAU OF PRISONS,

Petitioners

—v.—

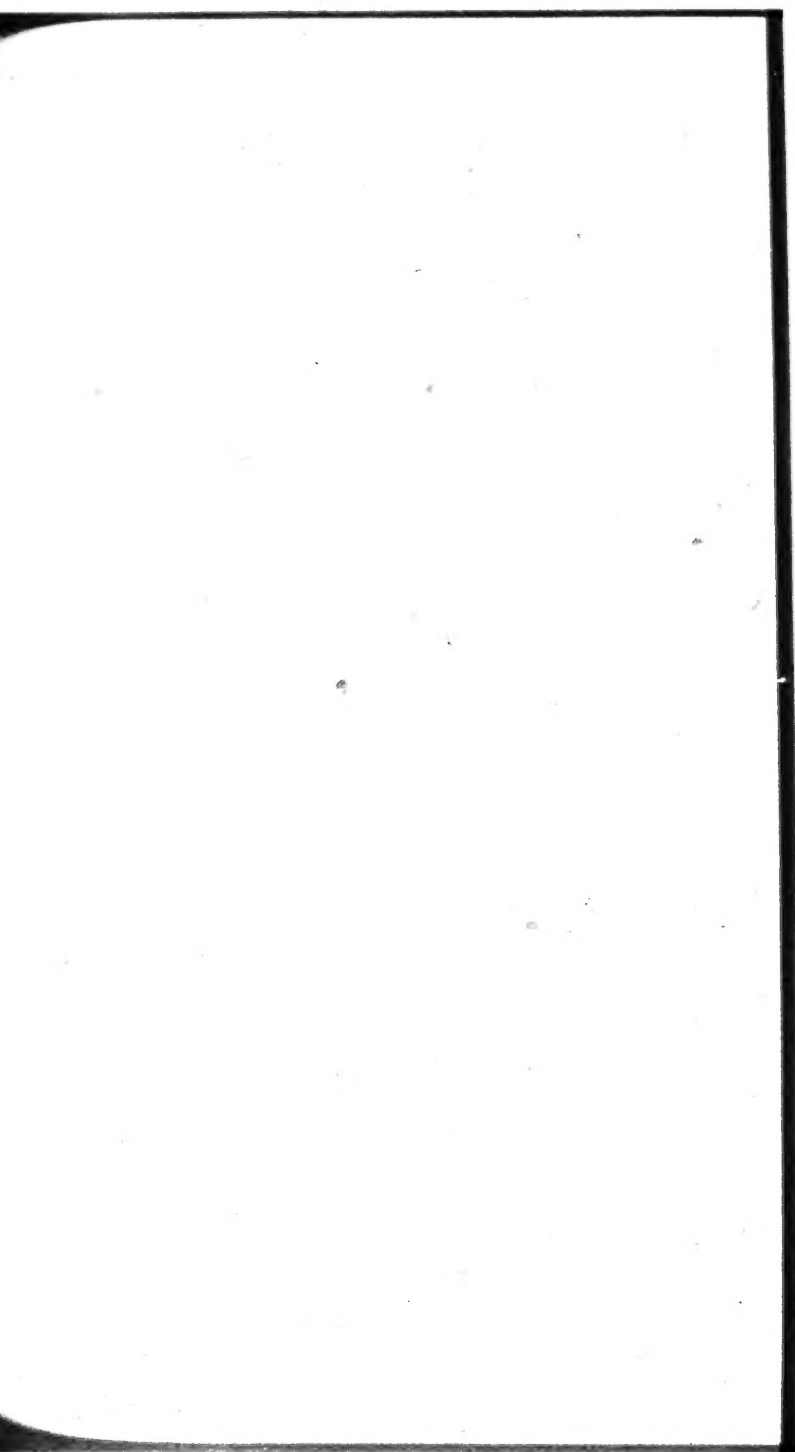
THE WASHINGTON POST Co. and BEN H. BAGDIKIAN

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

INDEX

	Page
Docket entries	1
Complaint and exhibits	3
Plaintiffs' exhibits in support of preliminary injunction	64
Defendants' exhibits in opposition to preliminary injunction..	71
Memorandum of March 13, 1972	78
Transcript of March 23, 1972, hearing	80
Trial exhibits	232
Plaintiffs' motion to reopen	265

	Page
Defendants' opposition to motion to reopen	276
Memorandum opinion of April 11, 1972 [Appendix A to Petition for Writ of Certiorari]	
Declaration and order [Appendix A to Petition for Writ of Certiorari]	
Notice of appeal	282
Court of Appeals order or remand [Appendix C to Petition for Writ of Certiorari]	
Transcript of Hearing of November 21-22, 1972	283
Abel Deposition (Pl. Exh. 14)	478
Machacek Deposition (Pl. Exh. 63)	500
Bensinger Deposition (Pl. Exh. 64)	524
Mattick Deposition (Pl. Exh. 65)	573
Government Exhibit 13	612
Government Exhibit 12	616
Extract from Government Exhibit 10	617
Extract from Plaintiffs' Exhibit 15	619
Plaintiffs' Exhibit 22A	620
Plaintiffs' Exhibit 29A	622
Plaintiffs' Proposed Finding of Fact and Conclusions of Law [Appendix E to Petition for Writ of Certiorari]	
District Court's Supplemental Opinion [Appendix B to Petition for Writ of Certiorari]	
Court of Appeals opinion [Appendix F to Supplemental Petition for Writ of Certiorari]	
Bureau of Prisons Policy Statements:	
Nos. 7300.2B	626
7300.4A	630
2001.2B	637
7300.1A	650
Order Allowing Certiorari	656



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
1972	Deposit for cost by
Mar. 10	Complaint, appearance; Exhibits A thru F filed
Mar. 10	Motion of pltfs. for order to show cause and for a preliminary mandatory injunction; P&A; c/s 3-10-72; M.C. filed
Mar. 13	Hearing on motion for temporary restraining order; Memorandum denying interim temporary relief; setting hearing on preliminary injunction for 2-23-72 at 9:30 A.M. (N) (Rep: C. Bryholdt) Gesell, J.
Mar. 13	Affidavit of Norman A. Carlson with attachment. filed
Mar. 15	Motion of pltfs. for preliminary injunction; c/s 3-15; M.C. filed
Mar. 17	Transcript of proceedings, March 13, 1972, pages 1-45; reporter: Katherine K. Byrholdt, Court's copy. filed
Mar. 21	Points & Authorities by defts. in opposition to motion for preliminary injunction; appendix A, B & C; c/m 3-21. filed
Mar. 23	Motion for preliminary injunction heard and taken under advisement. (Rep. Watson) Gesell, J.
Mar. 29	Motion of pltffs. to re-open record for receipt in evidence of additional exhibit; affidavit; memorandum; c/s 3-29-72 MC.

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
1972	
Apr. 5	Memorandum Opinion constituting the Court's findings of fact and conclusions of law denying motion of pltf. for mandatory or other emergency relief and denying motion of pltf. to reopen the record. (Order to be presented) (N) Gesell, J.
Apr. 10	Transcript of proceedings, March 23, 1972; court rep: I. Watson, Court's copy. filed
Apr. 12	Declaration finding portions of Bureau of Prisons Policy Statement 1220.1A in violation of the First Amendment of constitution and that press has right to interview inmates of Federal Correctional Institutions with certain exceptions; Order enjoining Federal Bureau of Prisons; directing issuance of new rules governing press interview within 30 days; directing defts. to grant press interviews, with exceptions, between date of this order and issuance of new rules. (N) Gesell, J.
Apr. 14	Motion of defts. for a stay of the Court's order of 4-11-72 heard and denied. (Rep: P. Harper) Gesell, J.
Apr. 14	Order denying application of defts. for a stay of Court's order of 4-11-72. (Rep: P. Harper) Gesell, J.
Apr. 14	Notice of appeal by defts. from order of April 11, 1972; copy mailed to Joseph A. Califano, Jr. filed
Apr. 14	Motion of Government for stay of Court's order of 4-11-72 heard and denied. (Rep: P. Harper) Gesell, J.
Apr. 14	Order denying oral application of defts. for a stay of Court's order of 4-11-72. (N) (App/N) (Rep: P. Harper) Gesell, J.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 467-72

[Received Mar. 14, 1972, Docket Unit, Civil Division]

THE WASHINGTON POST CO. and BEN H. BAGDIKIAN,
PLAINTIFFS

v.

RICHARD G. KLEINDIENST, Acting Attorney General of
the United States and NORMAN A. CARLSON, Director,
United States Bureau of Prisons, DEFENDANTS

DISTRICT OF COLUMBIA) ss:

COMPLAINT FOR DECLARATORY, MANDATORY,
AND INJUNCTIVE RELIEF

1. This action for declaratory and injunctive relief arises under the First Amendment to the Constitution of the United States. The matter in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars (\$10,000). This court has jurisdiction of this action under 28 U.S.C. §§ 1331, 1361 and 2201, 2202.

PARTIES

2. Plaintiff Washington Post. Co., a Delaware Corporation doing business in Washington, D. C., publishes *The Washington Post*, a newspaper with a daily circulation in excess of 500,000 in the Washington Metropolitan Area and throughout the United States. It participates in a number of news services which result from time to time in the republication of Washington Post articles in other newspapers throughout the United States.

3. Plaintiff Ben H. Bagdikian is a reporter and an Assistant Managing Editor employed by Plaintiff Washington Post Company. He is a specialist in reporting on

prisons, and has published in The Washington Post a comprehensive series of articles on prisons, in America, copies of which are attached as Exhibit A hereto.

4. Defendant Richard G. Kleindienst is the Acting Attorney General of the United States and as such has control over the policies and practices of the United States Department of Justice and of the United States Bureau of Prisons as a concomitant agency thereof.

5. Defendant Norman A. Carlson is Director of the Federal Bureau of Prisons and as such also has control over the policies and practices of the United States Bureau of Prisons.

CAUSE OF ACTION

6. On or about February 14 or 15, 1972, there began a wave of strikes by inmates of federal prisons at Lewisburg, Pennsylvania; Danbury, Connecticut; Marion, Illinois; and perhaps elsewhere in the United States. (See Bagdikian Affidavit, attached as Exhibit B hereto).

7. On March 1, 1972, after receiving numerous letters and indirect reports about these strikes and other events at said federal prisons, plaintiff Bagdikian in a telephone conversation with defendant Carlson requested permission from him to interview inmates at the Lewisburg and Danbury Penitentiaries. Defendant Carlson refused permission. (Exhibit B, Paragraph 4.)

8. On March 2, 1972 plaintiff Bagdikian renewed his request to Mr. Carlson in writing. (See Exhibit C hereto.)

9. On March 2, 1972, defendant Carlson wrote to plaintiff Bagdikian, again denying the the request, and citing Bureau of Prisons' Policy Statement 1220.1a (February 11, 1972) (See Exhibit D hereto).

10. Since March 2, 1972, plaintiff Bagdikian has continued to receive letters and indirect reports alleging that a peaceful work stoppage is still in progress at Lewisburg and Danbury; that prison officials are engaging in large scale reprisals against striking prisoners and their prisoner-representatives contrary to previous undertakings that they would not do so; and that publicly

reported statements of prison officials about the events at Lewisburg and Danbury are inaccurate or untrue. (Exhibit B, paragraph 5.) As recently as March 9, 1972, plaintiff Bagdikian has received a letter from an inmate at Lewisburg urging him to investigate the situation there "as soon as possible" (See letter attached at Exhibit E).

11. The defendants' policy prohibiting newsmen from interviewing prisoners at Lewisburg and other federal prisons has resulted in a virtual blackout of news about events and conditions at those prisons. (See Exhibit B, paragraph 6.)

12. Federal prisons are governmental institutions of great concern to the American public. They are supported by tax revenues, are administered by public officials, including the defendants herein, and serve as places of incarceration for persons convicted of crimes in federal courts. Federal prisons are created by and are ultimately subject to regulation and reform by the United States Congress and the President of the United States. Events such as those presently occurring at Lewisburg and Danbury are, therefore, newsworthy and of great importance to the public within the meaning of the First Amendment to the United States Constitution.

13. A substantial segment of the American public, and a large number of Congressmen and other federal officials, rely on *The Washington Post* to supply them with information on matters of public importance.

14. In denying plaintiff Washington Post Co.'s employee, plaintiff Bagdikian, permission to interview prisoners at Lewisburg Penitentiary, defendants violated the First Amendment rights of both Plaintiffs to gather information for the purpose of reporting it to the American public and the First Amendment rights of the public to have the press obtain and publish such information.

15. The aforesaid violation of the First Amendment rights of plaintiffs and the public has caused and will continue to cause the plaintiffs and the public immediate, grave and irreparable injury by preventing plaintiffs from gathering contemporaneous information, and reporting to the public, about significant news events relating to federal prisons.

16. In contrast to defendant Carlson's present insistence that Bureau of Prisons' regulations prohibit interviews of inmates by newspaper reporters, plaintiff Bagdikian and other reporters have on various occasions in the past interviewed inmates at federal prisons with the knowledge and approval of Bureau of Prisons' Officials. Thus defendants have, in violation of the First Amendment, arbitrarily, capriciously, and without adherence to reasonable standards decided whether or not to permit reporters to interview prisoners according to their inclinations as to whether permitting such interviews will or will not further their own interests at the time in question.

17. As federal officials responsible for promulgating and effectuating the policies and practices of the Bureau of Prisons governing access by reporters to federal prisons and to inmates in those prisons, the defendants are obliged to promulgate and to enforce even-handedly only regulations, policies and practices which are consistent with the requirements of the First Amendment. Contrary to their obligations under the Constitution of the United States, the defendants have failed and refused to do so.

18. Plaintiffs have no adequate remedy at law other than to bring this action for declaratory, mandatory and injunctive relief.

PRAYERS FOR RELIEF

WHEREFORE, plaintiffs pray:

(1) That the Court declare that the conduct of the defendants in refusing to permit plaintiff's Bagdikian and plaintiff Washington Post Co. to interview inmates of the federal penitentiaries at Lewisburg, Pennsylvania and Danbury Connecticut without intimidation or censorship by prison officials and thus outside the hearing of prison officials is in violation of the First Amendment to the United States Constitution; that plaintiff Bagdikian and the plaintiff Washington Post Co. have a right under the First Amendment to conduct such interviews;

and that the public has a right under the First Amendment to have plaintiffs conduct such interviews.

(2) That the Court declare that the conduct of the defendants in exercising arbitrarily and capriciously their power to permit or refuse interviews or prison inmates by reporters without regard to any reasonably clear standards governing the exercise of such power is in violation of the First Amendment to the United States Constitution; and that defendants are obliged to prepare and promulgate—and to enforce even-handedly—regulations governing access by reporters to inmates of federal prisons who are willing to be interviewed, without regard to any desire by the defendants or their subordinates to suppress adverse publicity or criticism at any given time;

(3) That the Court declare that the regulation or policy of the Bureau of Prisons prohibiting reporters from interviewing identifiable prisoners is in violation of the First Amendment to the United States Constitution; and that the defendants are obliged to permit reporters to interview inmates at federal prisons who agree to be interviewed, and to identify such inmates who wish to be identified.

(4) That the Court order the defendants to permit plaintiff Bagdikian or other reporters employed by plaintiff Washington Post Co. to interview inmates of the federal penitentiaries at Lewisburg, Pennsylvania and Danbury, Connecticut without intimidation or censorship by prisons officials and thus outside the hearing of prison officials.

(5) That the Court order defendants to prepare, promulgate, and enforce even-handedly regulations consistent with the First Amendment governing access by reporters to inmates of federal prisoners who are willing to be interviewed;

(6) That the Court enjoin defendants from enforcing any regulation, policy, or practice which would prohibit reporters from identifying inmates whom they have interviewed, where such inmates are willing to be identified.

(7) That the Court grant such other and further relief as the Court may deem appropriate.

Respectfully submitted,

WILLIAMS, CONNOLLY & CALIFANO

By /s/ Joseph A. Califano, Jr.
JOSEPH A. CALIFANO, JR.

/s/ Richard M. Cooper
RICHARD M. COOPER

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Washington, D. C. 20006
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Attorneys for Plaintiffs

shame. No civilized society should
allow it to continue."

Norman Carlson, director of the U.S.

showing "no stiffened society" should allow it to continue."

Noriman Carlson, Director of the U.S. Bureau of Prisons: "Anyone not a criminal will be when he gets out of jail."

But the chance is glacial. In most places there is no change at all.

The system is hardly a true system, but a disjointed collection of buildings and jurisdictions. The smallest is the federal—generally accepted as the more carefully designed, if bureaucratic.

On any given day the prisoner population in federal prisons is about 20,000, or less than 10 per cent of all sentenced prisoners in the country.

See PRISON, A16, Col. 1

Prisons Have Various Goals—Some Contradictory

PRISON, From A1

The states have 200 facilities, ranging from the big state penitentiaries to an association of a few houses, factories, camps and juvenile halls, ranging from some of the most humane in the country to some of the worst. They hold over 200,000 prisoners each day.

There are 4,037 jails and uncounted city and town lockups where the large in conditions run from fairly good to filthy and dangerous. Technically, "jail" is a place where a person is held awaiting trial, "prison" where he serves a sentence.

The country jails hold about 161,000 persons a day, 5 per cent of them juveniles (usually mixed with adults) and 3 per cent women. In the big jails, the total incarcerated population is about 1 million. If one includes town "drunk tanks," 3 million Americans pass through cells each year.

Who are the Americans who find themselves behind bars?

They are overwhelmingly the poor, black and the young. A profound sense of being cheated runs through them. They may have been cheated by the environment they grew up in, by chaotic families, poor neighborhoods, ineffective schools, depressing career opportunities, but this is not the usual reason the average prisoner feels cheated. He feels that he has been unfairly treated by the criminal justice system. He is right.

A Tiny Minority of Lawbreakers

The President's Crime Commission in 1967 showed that from 3 to 10 times more crime is committed than is ever reported to police. They cite a survey showing that in a sample of 1,500 persons of all racial levels, 91 per cent admitted committing acts for which they might have been imprisoned but were never caught. So most lawbreakers are never caught.

If they are, the affluent tend to avoid imprisonment. The concentration in prison of the poor, the black and the young reflects, among other things, a racial selection by which the odds are whittled down to put behind bars.

Once found guilty, the fate of a sentenced man is subject to the vicissitudes of fate. Robert Apahiana sold a matchbox of marijuana and happened to find himself in a particular courtroom in New Orleans where he was sentenced to 30 years in prison; hundreds of others have done the same thing elsewhere and not gone to prison.

So every prisoner knows other offenders who received substantially better treatment than he did. He knows, and statistics prove, that justice is not even-handed.

Once committed to prison, he is still governed by chance. The building he is in may be a jail or old fortress with four men in a narrow, dark and damp cell, or he may be in a clean one, one man to a cell. More than a quarter of all prisoners are in prisons 70 years or older.

If he is in Delaware, the state will spend \$12.71 a day on his food and custody; if he is in Arkansas, \$12.5 a day. If he is in Pennsylvania he will get meat and three vegetables almost every meal; if in South Carolina, meat once a week and other times greens and beans.

In some prisons he will be raped homo-sexually unless he is afraid and has a weapon; in others he will be left alone. In some, the guards will abuse him and then turn over to sympathetic or terrorizing fellow inmates, and ceases his bid to make sure he gets no word of it to the outside. In other prisons he will be treated humanely and can appeal punishments to an impartial board, including inmates, and communicate with the free world.

The people on whom such uncertain

justice is visited are men, women and children who already have been unlucky. At least half have been involved in drugs or alcohol. They are generally of normal intelligence (the median for federal prisoners is 102 I.Q.; for a typical Midwest state, 98.78) but they test out between 7th and 8th grade achievement.

In a typical state 25 per cent are in for burglary, 23 per cent for larceny, 13 per cent for robbery, 5 per cent for forgery, 6 per cent for assault, 5 per cent for drugs, 5 per cent for auto theft, 4 per cent for homicide, and 2 per cent for some sex offense.

The Protection of Society

The President's Crime Commission showed that in 1963 there were 2,700,000 serious crimes reported to police and 77,000 arrests made and of these 63,000 people imprisoned. Thus just for reported crime, which is a minority, only 2 per cent of criminals went to prison. If they were all released they would not materially increase the law-breaking population.

If they were released the prisoners conceivably could affect the crime rate in another way: by encouraging others wise inhibited people to commit crimes because they felt they would not be punished.

But nobody knows this or can even guess intelligently.

For all the public clamor about crime and punishment, this field remains a wasteland of research, the most remarkable void of reliable analysis of any major institution in American life. The word void is prison and prison, prisons where, in the words of one administration, "we are sorting marbles in the dark." The American prison system is a monument to mindless procedures in the midst of a society that prides itself on being scientific and measuring everything in steel.

Post 1/30/72

The result is that the lives of millions of prisoners, the billions of dollars spent on them (about \$1.5 billion this year), the salary of citizen from crime and the loss of \$20 billion to victims of crime, continue to be governed by archaic conventional wisdoms. The only thing we are fairly certain of is that most of these conventional wisdoms are wrong.

It is one of the conventional wisdoms that the current use in crime is strongly influenced by excessive leniency by prosecutors and courts. Another is that harsh punishment will reduce crime. J. Edgar Hoover told a recent Senate committee, "The difficulty is with district attorneys who make deals and judges who are too soft. Some are bleeding hearts."

According to the FBI, from 1973 to 1985 the crime rate per 100,000 rose 35 per cent. Beginning in 1964, federal courts and most state judges began giving out longer sentences. From 1964 to 1970, federal sentences became 38 per cent longer and time served was even more because the federal parole board began reducing paroles. California's sentences have risen 50 per cent.

But from 1965 to 1970 the national crime rate—during the hushier period—rose 60 per cent.

Robert Martinson studied every report on treatment of prisoners since 1945 and analyzed the 231 studies. He concluded:

"... There is very little evidence in these studies that any prevailing mode of correctional treatment has a decisive effect in reducing recidivism of convicted offenders. 'Rehabilitation' refers to crimes committed by released prisoners.

James Folsom of the National Council on Crime and Delinquency, and Gerald S. Smith, of the University of Utah, made one of the most rigorous analyses of various treatment of American prisons and concluded:

"It is difficult to escape the conclusion that the act of incarcerating a person at all will insure whatever potential he has for a crime-free future adjustment and that, regardless of which treatment are administered, we do not know how to prevent crime. If we do know, he is in prison, the better he is kept there the more he will deteriorate and the more likely is it that he will recidivate."

A Conflict of Motives

A fundamental reason for confusion is that unlike some countries, the United States has never decided what it wants its prisons to do. There are several motives for criminal punishment:

1. Hurting the prisoner so that he will feel free of guilt, having paid for his act;
2. Using the criminal as a scapegoat for others in society who feel the same criminal impulses within themselves and by punishing the criminal purge themselves;
3. The need of some to feel morally superior by sustaining outcasts in a despised and degraded condition;
4. Keeping the criminal out of circulation;
5. Revenge imposed by the state to prevent the victim or his family from taking private revenge, as in family feuds;
6. Revenge in the name of all society so that the public will not impose its own version of justice, as in lynch mobs;
7. Deterrence of the criminal who, by being hurt, will decide that committing the crime is not worth it;
8. Deterrence of others who, seeing the criminal suffer, will not imitate his crime; and
9. Reforming the criminal so that he will learn to live in peace with society.

Criminal punishment may accomplish a number of these objectives simultaneously. But some are contradictory and cannot be done together. It is not possible to cause a man to respect those who treat him with deliberate cruelty. Scapegoating does not eliminate the illicit impulse; where punishment of the individual is violent and cruel, it promotes violence and cruelty in society at large.

The confusion in goals for prison has its roots in a curious phenomenon: the most damaging practices in criminal justice were started as humanitarian reforms.

The prison itself is an American invention created out of genuine compassion.

For centuries, people were incarcerated only until the local lord or king could impose punishment. Punishment would then be death by hanging, drowning, stoning, burning at the stake, or beheading, usually with a large crowd observing to deter them from imitation.

A Place for Penitence

In the 1780s, the Quakers of Philadelphia, taking soup to the jails, were appalled by conditions. They organized to pass laws substituting sentences of incarceration in permanent, well-designed prisons as a substitute for death, mutilation or flogging.

They designed the new prisons for solitude and meditation on the prevailing theory that men do wicked things because the devil has invaded them and only through contemplation of their sins could they become penitent and innocent again. The new institutions for penitence were called penitentiaries. The prisoners were forbidden to speak and saw no one, sometimes not even their jailers.

Europeans studying the new country reported on the new institution and adopted it, though some, like De Tocqueville and Dickens, observed that penitentiaries often produced insanity.

Part 1/35/12

In the late 1960s, it was observed that country people on their farms had been law-abiding but after they moved to the impoverished industrial cities they became criminals. It was thought that there might be some connection between environment and crime, that prisons might be a way to counteract bad environment.

The impact of Freud and psychology complicated the view of human behavior, adding to the physical environment the emotional history of the individual. If prison was an opportunity to change the environment, it might also be a place to give the prisoner a more accurate view and control of himself.

But the conflicts have never been resolved between punishment and "treatment," between the purpose of protecting society by keeping the criminal locked up and the goal of protecting society by trying to condition him for peaceful return to the community.

The Usefulness of "Industries"

Only this continuing confusion could explain the survival of irrationalities like "prison industries" and the decisions of parole boards.

Most work inside federal prisons, for example, is done for an independent corporation called Federal Prison Industries, Inc. It has a board of directors mostly of executives of private corporations who serve without pay. It maintains 52 shops and factories at 22 federal institutions where it employs about 25 per cent of all federal prisoners.

Historically, at the insistence of private business and labor unions (George Meany, head of the AFL-CIO at one time on the board of FPI), they do not make goods that will compete with privately made goods, which means that they usually do not do any skills that will let the ex-convict compete in private industry after he gets out.

The chief customer is the federal government. Pay rates are from 10 to 47 cents a day.

FPI in 1976 had a return of 599 million on \$58 million in sales, or 17 per cent profit or, also, the highest of any industry in the United States (average for all U.S. industry is 4.5 per cent on sales, the highest being the mining industry at 11 per cent).

FPI has proudly announced that it declared a dividend every year since 1946 and that these dividends total \$62 million. To whom was this dividend on captive labor issued? The American taxpayer—the general treasury of the United States.

Federal prison officials agree that a major reason for repeated crime by ex-convicts is their lack of skill in the jobs that are needed in free life—medical and dental technicians and other categories that will hire all the qualified help they can get. They also admit that they lack the money to train sufficient numbers of convicts in these marketable skills. Yet they have regularly turned back large profits made by prisoner labor.

The Effects of Parole

Even prison industries cannot match the performance of parole boards for lack of success and lack of accountability. Parole is another humanitarian reform that was perverted. It was supposed to give the prisoner incentive to improve himself to earn a release earlier than his full term. It was supposed to shorten time spent behind bars. It has backslid.

Several sentences on the assumption that most prisoners will be released in something like one-third their time. The prisoners have not been released at that rate. Consequently, American prisoners serve the longest sentences in the Western world.

But that is not the worst characteristic of American parole boards. Their purpose is to release the prisoner as soon as possible consistent with his own good and protecting society from repetition of crime. The boards are in the position of predicting human behavior, a difficult task for even the most perceptive and wise individuals.

Most parole boards are appointed by governors and include his cronies or former secretaries.

Parole boards regularly release the worst risks, as measured by the best data.

Take the case of Jack Crowell (not his real name, but a real person). He is a stocky, 41-year-old Navy veteran doing 10 years for voluntary manslaughter in a Southern state. He had such a good record in the state penitentiary that toward the end of his sentence he was permitted to join the state's work release program.

Under work release he left prison to live in an unlocked dormitory in a city. He got up each morning, drove his boss's truck to work site where he became a master plumber, supervising an assistant. At the end of the day he returned to the dormitory. He earned \$140 a week and had saved \$1000. He applied for a parole. The prison system recommended him. He was turned down.

Typically they didn't tell him why except that he wasn't "ready." They did parole some men direct from the state prison who had never had a chance to show that they could hold a good job and handle freedom.

Who Are the Worst Risks?

Crowell's is a typical case. One can guess what happened. He was in for manslaughter. Parole boards do not like to parole killers and sex offenders because it makes for bad public relations. They fear the headlines if such men repeat crimes while on parole. But contrary to conventional wisdom, murderers and sex offenders are the most likely not to repeat a crime.

In 1969 parole boards reporting to the Uniform Parole Reports released 23,563 prisoners before they completed their full sentences. Almost one-third of them were burglars who in their first year had their usual rate of repeated crime of 31 per cent. There were 2,870 armed robbers released and in the first year 27 per cent went back to prison. The boards released 2,417 forgers, 30 per cent of whom were re-imprisoned, and they released 2,292 larcenists, of whom 30 per cent went back for various violations. Murderers and rapists released had failure rates of 11 to 17 per cent.

These are the failure rates for various offenders as compiled by the most authoritative group, the Uniform Parole Reports of the National Probation and Parole Institutes of the National Council on Crime and Delinquency:

Negligent manslaughter	11%
Statutory rape	12
Forcible rape	15
All other sex offenses	17
Aggravated assault	22
Armed robbery	27
Unarmed robbery	30

Crimes are failure rates for the first year on parole; the rate for offenders as the group is out longer but the rank order does not change significantly over the years.)

It appears reasonable for parole boards to be more cautious in releasing violent men. Even if burglars repeat their crimes, theft of property is less harmful to society than killing and raping. But here, too, the data do not support the parole boards: murderers and rapists on their second offense do not commit as many added murders and rapes as do other kinds of criminals. Of 30 cases of willful homicide that sent 1969 parolees back to prison in their first year of freedom, 24 were committed by people not originally in for willful homicide. Six released murderers went back to prison for another killing, but nine burglars went back for murders.

The 511 forcible rapists on parole, to take another example, committed four new forcible rapes; burglars during their paroles committed eight. All men whose original conviction was for property crimes while on parole committed 12 forcible rapes.

The rate of new homicides and rapes by all categories of released prisoners is about the same, approximately one-half of 1 per cent. Since murderers and rapists represent a small proportion of all released prisoners, about 12 per cent for all such categories, their one-half of 1 per cent represents less of a threat to society than do the violent new episodes by other kinds of criminals.

Because they regularly release the worst risks, parole boards would do better picking parolees at random.

Parole boards are not solely in blame. Whatever other notions are in their heads when they make their decisions, they are seriously influenced by public opinion. The police and the general public are outraged at the violent crimes of released prisoners; they don't know that 97 per cent of all prisoners are released anyway and that the longer criminals stay in prison, the more crimes they commit afterwards.

The Torture of Uncertainty

In prison after prison, the uncertainty of the sentence was mentioned as the most excruciating part of prison. "Give me a fixed sentence anytime," is common.

Or, "I behaved myself, the warden recommended me, I had a job on the outside, my family said they had a place for me and they turned me down. I ask them why and they say, 'You're not ready.'"

"I ask them what that means and they don't say. What am I supposed to do? Give me five, five me ten but let me know how much time I have to do and don't keep me hanging all the time."

Society takes elaborate pains to assure that lawyers and judges are qualified to exercise their power over the freedom of their fellow citizens and that no person is deprived of his liberty without due process of law, including a review of parole decisions. Yet the greatest of decisions—a majority of the time a citizen may spend imprisoned—is determined most of the time by untrained persons acting without adequate information in opposition to the best data and without accountability.

Rec'd 1/30/77

During the last few years, the federal parole board has reduced paroles by 20 per cent.

In Louisiana, they stopped giving all convicted armed robbers parole, after which armed robberies in the state rose 57 per cent.

It is tragic for the protection of society and the future success of prisoners that carefully selected boards do not use the best available data to decide the issue of liberty or imprisonment. It unnecessarily exposes society to more crime, it stunts the potential for change within convicted criminals and it suffuses American prisons with frustration and bitterness.

The Least Skilled Institution

What remains after the available data on criminality are sifted is the remarkable absence of other good data on American prisons and their effectiveness. Prisons would seem to be ideal laboratories for social scientists—controlled populations in a variety of conditions, available to be measured and compared. But they remain the least scientifically studied of any major American institution.

George Solecky, associate director of the California Youth Authority, was asked why it is that a society apprehensive about crime, and a country anxious about criminals, did not insist on rigorous study and analysis.

"Wall e minute," Solecky said, "Wall e minute. Who said society was concerned? Who said they give a damn? They want some people put away and then they want to forget about them."

Why don't prison administrators themselves look carefully at their own results? George Hetsu, director of Texas prisons, says:

"I know of no institution unless it be organized Christianity which has shown a greater reluctance to measure the effectiveness of its varied programs than has corrections."

The answer seems to be that what happens to prisoners inside American prisons has very little to do with the prisoners themselves or what will happen to them after they are released into the free world. The state of prisons seems mainly determined by the values of the American citizen who considers himself law-abiding.

John Irwin served five years in Soledad Prison for armed robbery. He is now a college professor at San Francisco State College, specializing in penal studies. He says:

"The radicals talk of abolishing punishment, but they really want to start punishing a new population of 'capitalist pigs.' The liberals want punishment but call it 'treatment.' The conservatives are the only ones honest about it, but they want such disproportionate amounts that it's crazy."

It is hard to avoid the conclusion that what goes on inside American prisons tells more about the character of people outside the walls than it does about the inmates inside.

Next: Inside an American penitentiary

Post
1/30/72
-5-

No. 50061, Inside Maximum Security

Six Days in State Prison Through the Eyes of a Murderer

Second of eight articles.

By Ben H. Bagdikian
Washington Post Staff Writer

The aging forger slid over the bench where we were watching television.

"Did you really do it?"

"Do what?"

"You know. The murder."

I looked at him in astonishment. Prisoners don't say things like that to each other. It's the kind of question a clumsy informer asks.

"No," I told him calmly. "I didn't."

It was true. I was in a maximum security penitentiary for murder. But I hadn't killed anyone. No one at the prison—warden, guards, inmates—knew that. All they knew was that one night, two state policemen delivered me in handcuffs as a "transfer" from a distant county jail.

Huntington State Correctional Institution is a fortress behind high brick walls and gun towers in the mountains of central Pennsylvania. It was designed to make sure that no man would break out. It had been hard for me to break in, but finally I was here, in crumpled institutional uniform, Prisoner No. 50061, sitting in Cell

Block A with my fellow inmates—murderers, rapists, armed robbers, forgers, burglars.

For three months, I had looked at the American prison system as an outsider, observing men behind bars and talking about them the way a tourist visits a zoo. Prison experts agreed that perception of what it means to be imprisoned in America remains dim unless you are on the other side of the bars. They were right. Months of interviewing prisoners, former prisoners,

The Shame of the Prisons

corrections administrators and research scientists, as well as reading dozens of books and reports, had not prepared me for the emotional and intellectual impact of maximum-security incarceration.

On the night of Friday, Dec. 17, two undercover Pennsylvania state policemen delivered me to the state penitentiary.

When they were gone, there was no one inside the prison who knew that I was not really Benjamin Barsam.

ian," county prisoner awaiting grand jury action for murder.

A trusty, an older prisoner, led me to cell No. 114. The door didn't close behind me with a "clang" as it does on television. It clicked. Firmly.

The cell has no window. It is about seven feet by eight, with a steel cot, small wooden table and chair, a metal shelf on the wall. In one corner near the door there is a porcelain toilet and directly above it a porcelain sink with spring-loaded push-buttons for hot and cold water. Above that a square of shiny metal is riveted to the wall for a mirror.

Two sheets and blankets are on the cot. I make up the bed. The mattress is about an inch thick.

A guard puts a piece of paper on my cell door. "That has your name on it—in case you get lost."

The only light inside the cell is a square fixture above the door, aimed into the cell, casting a pale, yellow light into the eyes.

The corridor lights go dim. A turnkey comes by to double-lock each cell door for the night.

See ELSONS, A12, Col. 1

Inside a Pennsylvania Prison

PRISONS, From A1

Suddenly I am very tired. I remember that I didn't have dinner. There is nothing to read and nothing in my pockets. It is hard to sleep.

The new sounds fill the mind. Unseen prisoners snore or call out in their sleep. Periodically, someone is heard urinating, followed by the explosive flush. Or there is the percussive bang of the faucet springs in the sinks. The telephone on the guard's desk rang all night. From time to time there is a quick footstep as a guard shines a flashlight flashlight into the cell for bed checks.

Sleepless, I experience the first surprise of imprisonment: It is difficult mentally to create the outside world. The prison is so drained of normal values that it is hard to connect, even in the imagination, the reality of inside with the strangely remote reality of outside.

It takes a conscious act of will to recreate the events of that same day, infiltrating a prison.

The day started with a normal morning at The Washington Post; lunch in a favorite Washington restaurant with a favorite person; driving to Pennsylvania in the late afternoon with the long, yellow light of the setting sun lying gently on the golden stubble of cornfields and the still-green meadows; being stopped by a Pennsylvania state trooper for speeding and being unable to tell him I was late for my imprisonment for murder, and later laughing at myself for driving to the penitentiary in a rented automobile.

In my cell, it is hard to make vivid memories that only four hours earlier I was in the Pennsylvania State House in Harrisburg, in the office of Attorney General J. Shane Creamer, who made the imprisonment possible and who, with his top assistants, gave me a rapid-fire briefing on my cover story. And the cold, two-hour drive from State House to state pen, arguing the pros and cons of capital punishment with the two undercover state policemen.

I worry for a moment if my project has been secret enough. Weeks earlier I was about to enter the Oklahoma State Penitentiary at McAlester when an ex-convict visited me and said, "You'll never get out alive. Too many people know about it and the grapevine down there has picked it up."

A prisoner entering under false pretenses is automatically assumed to be a planted informer, an occupation with high mortality rates.

I also make sure that I remember Creamer's private home phone number, the only thing I might use in a jam to convince a guard that I'm not a real prisoner. A week earlier as we left Creamer's living room he asked Allyn Bieloff, his director of corrections, whether in the event that trouble developed at the prison I couldn't tell a guard I was really a newspaperman and wanted to speak to the attorney general. Bieloff, broke into a grin.

"Oh, he could do that, all right. They'd just think he was crazy."

Only when the difficulty of vivid recollection of the outside world recurs day after day do I realize that it is not because of fatigue or tension or a bitter day. In prison, the outside world quickly becomes unreal.

Around 5:30 in the morning, the turnkey comes by turning the bolts on each door. It does not release the door. Every cell on the tier is automatically locked by a 200-foot-long bar. Only when that moves about four inches, with an almost inaudible rattle, does it release the doors.

"New men—chow!" I was told last night to ignore that call. The bar moves and after 30 seconds closes the tier again. Five minutes later, at about 7 a.m., there is another shout, "DCCII—chow!" That's it.

Like all entering inmates, I am in DCCII, Diagnostic Classification Center, Huntingdon, the first weeks of prison when there is recording of personal and criminal histories, some testing and assignment to a permanent cell block and permanent prison work in the soap factory, printing plant or clothing mill. The bar moves to the open position and I step out of my cell.

Some Inmate Companions

I see my group for the first time, about 25 men with rumpled hair shuffling to line up along the wall. Mostly in their twenties, mostly with long hair, sideburns and some beards. Three blacks. All looking unfettered.

The guard says, "Let's go," and we walk in loose formation through the Center, the hub of the prison. I fall in next to an older man who nods briefly.

At the dining hall, a large room with about 20 rows of ten tables, each table with four wooden seats attached. All 700 prisoners eat together.

At the entry is a table with a large container of utensils. A uniformed guard wearing transparent plastic gloves picks up one knife, one spoon and one fork and hands them to each prisoner. We shuffle to the cafeteria line, taking metal, welled trays from a rack. Inmate workers hand out the food, sometimes helping it into the tray with hands encased in the surgical-looking clear plastic gloves: one fried egg, a cookie, box of dry cereal with milk, fruits, coffee.

Each group occupies a single row of tables. The kid next to me asks if I'm new and I asked what it's like here.

"Guards here are pretty good. Used to be a lot of head-knockers here. Real rough. Used to hit you with pipes and clubs. But they got rid of most of them. A few . . . left, though."

Self-Segregation of Races

The dining hall is strictly segregated, self-segregated I'm told. Blacks eat together, whites in their own rows. At a sign from our guard we return our trays to the cafeteria line, rinsing out our steel coffee cups. We carry our utensils to the door where another guard watches as each man deposits one knife, one spoon and one fork. No retention of weapons material.

We walk back to the cell block and are locked into our cells. There is nothing to do. Nothing to read. Razor and toothbrush and other personal effects were scaled up last night.

At lunch I sit next to Black, a tall Hell's Angel type, unbuttoned shirt showing masses of tattoos long hair in the neck, chin whiskers, a cross tattooed on the left cheekbone.

He speaks with a curious Southern accent. As a black prisoner walks by he says loudly, "There goes a prince." Another black walks by, "There goes the king." He looks at me and laughs. I don't laugh. He scowls.

He eats a spoonful of ice cream from his paper container and then offers me the rest. I decline. He looks at me steadily and says, "Gettin' pretty fat—bad when a man can't give away some m— ice cream just because he took a bite on it." Back at the cell block his cell is directly above mine on the second tier. As we wait in front of our cells for the bar to move, he drops a match on me. I figure I'll have trouble with him. He turns out to be my best friend.

In late afternoon, I am called to the hospital again. Still no pills and no razor. Return to cell block. As Christmas week extra, can watch television.

Black is on the bench behind me. I remember some last-minute advice given me, "Don't turn your back to anyone's cell; they can stab through the bars. And keep your back to the wall." I remain conscious of Black.

After supper comes the daily exercise in prison democracy: inmates vote on television programs. Between 6:30 and 6 prisoners have a choice of activity. They can watch television at one end of the corridor. They can play pinocchio at tables at the other end. They can sit on the concrete floor and talk in the middle. Or they can choose to remain locked in their cells.

If men choose to watch television they can vote as a guard reads out the six choices for each half-hour segment. Men on the other side of the cell block join us, so there was close to 50 percent black sitting on the benches. Relaxed but separate.

The first vote is on "Free Hawn," an all-white country-and-western program. It's on racial lines, most whites for it, all the blacks against it. Whites win. Overwhelming vote for "All in the Family." On subsequent nights, "Gin-smoke" is another big favorite. Also Dragnet.

Conversations Full of Daring

Then begins what was to be repeated day and night, the calculus of prison conversation: daring crimes taking incredible chances, violent fights, big hauls on robberies with the money quickly spent. "So I put the muzzle of that m—ling .36 right against the neck of the m—er and said 'Jeez drop your wallet . . .'"

Past 11/31/72
-2-

are interested in the escape story. If a man escapes, it's a story. Years ago, I can handle it." Someone asks how Huntington compares with other jails. "Alan, I've seen 'em all, and I don't really see that much difference. I can get along in any of them. You just go in, don't f--- with anyone, pick your own group and stay with them." Or, "The hole? Why in Ohio State I was in the hole for 30 m---ing days for fighting. First day I got out I find the same m---er and Phnom! I bust his jaw. Back in the hole for 60 days..."

A standard story told by a half dozen men on different occasions in various forms is the inmate's version of a profane and defiant speech to the judge who sentenced him.

"Send me up for life if you want, you m---er. I don't give a shit what you do. And I turned my back on the m---er and walked right out of the m---ing courtroom." Like the sex fantasies of barracks life in the Army, it's almost certain most of the speeches were never made.

In personal conversations without an audience there is less bravado, less violence.

"See that guy over there from B block? He's the greatest escape artist ever."

"Yeah? Just escaped from the street into Huntington State Penitentiary?"

Toward the end of the evening, Ollie

lives over and sits on the floor. He says he might have to be transferred for 45 or 60 days. One of the group says, "Don't! I know what you're up to. Pittsburg? C'mon, what was wrong with that state pen at Pittsburgh."

"Niggers control that. This is our place."

Mack shakes his head.

"All I tell you, wherever the niggers are, they try to talk over. Indiana State, the m---er, weren't even a majority and they took it over. You got to fight them or they'll do it every time. They ain't taking this joint over, I'll tell you that."

That afternoon during the movie, the villain is shown full-on on the screen during his most despicable moment. Even a black group of prisoners comes the shout, "That's a white man for you!" From a white group: "He's probably a Jew."

Although something like half the prison population is black, I see only one black officer on the staff. Most of the guards seem relaxed, able to small-talk their way around tense moments, avoiding harsh confrontations, establishing an atmosphere of easy relations with most of the prisoners.

Two or three of the guards are noticeable by contrast: rigid personalities, barking orders, speaking in contemptuous tones. It is remarkable how easy it is for a single harsh order to put everyone's teeth on edge. Prison is depressing and demoralizing, the walls and bars and guards and gates and steel and concrete remind one every moment that he is not free, that he is not a whole man because his whole physical being is under someone else's control. Paying guards keep that from being an intolerable challenge. A few backed orders in a harsh tone raise the level of felt hostility.

By Douglas Chevalier—The Washington Post

The exercise yard and sign tower at the fortress of Huntington.

Past 1/31/72
-3-

Cell 111 at Huntington State Correctional Institution, home of "Benjamin Barsamian," Number 50061.

By Dennis Chavakis--The Washington Post

It makes you realize that a couple of guards could bring the place in a crisis in a short time. At Huntington, the guards do not seem very sophisticated or educated--many of the prisoners are obviously more so than the staff--but this doesn't seem related much to their effectiveness at preventing confrontations. Most are skilled at easy relations and relaxed manner. With whites.

There is little or no visible antagonism to blacks among staff, merely an evident lack of communication.

One day one of the blacks in my area, then in sweeping the catwalks, singing

in a high-pitched voice like Ray Charles.

"What the hell are you doing?" the guard, an older man, yells harshly.

A young white inmate sitting on the floor near the guard says, "Oh, he's just that way, you know," and he twists his finger around his ear, indicating nothing. The guard mutters, "They're all like that."

Up on the catwalk, the black confederate's song singing in a thin voice and only if you listen carefully can you hear him sing a phrase that included, "goddam f--ing bitchy..."

In the exercise yard a few days later the same young black, a Muslim, is not silent as he argues with a white prisoner.

"This is the religion, God is in us. We have the power of God in us. You never see the guards f--ing with any Muslims, do you? You know you have? Why you think that is?"

At 3 o'clock, the television set is broken. The floor guard and everyone look at it and it sits locked in his cell for the night.

Husbands and Wives

The second day, a large homosexual inmate is moved into the cell next to me. He is an outstanding athlete, which may explain why he is treated with some deference.

Homosexuality is evident. In the auditorium the queens are obvious, some primping their hair, others walking in tight trousers with swaying hips. Some arm-in-arm and referred to casually as husband and wife.

My neighbor is referred to as "she" and "her" and plays the role of woman openly. The first night he is on the cell block, he borrows a razor blade from me, saying, "My husband will pay you back tomorrow." At supper one night he says to me, "Does my lipstick show?" Back at the cell block he has a quarrel with another homosexual, shouting at him, "You walk around here like you are God's gift to men."

Later my neighbor turns hostile to me. One night he asks, "Are you a Jew?" and when I said I was not, said, "Then why have you got such a crooked nose?"

There are jokes about my neighbor, but in anger they center on his blackness, not his sexual role.

At 3 a.m. one morning, my neighbor begins singing in a falsetto. Guards come from around the cell block as men wake up. "Shut up!" for Christ's sake, shout the guards. "White m--ers!" too open and black epithets. But my neighbor shouts back, "White m--ers!"

When the other prisoners keep shouting, my neighbor goes to his cell door and yells, it, calling, "Guard! Guard! Come here. Hec! Hec! I need you."

The prison is not on the edge of racial conflict, at least to this eye. But hostility is near the surface.

Earning 25 Cents a Day

I still have no reading material on the third day. Black gets some correspondence forms and lends me a ballpoint pen.

Most of the time I still sit in the cell and stare at the standard view: the steel lattice-work on my cell door, illuminated against the lighted corridor wall beyond. When you close your eyes you still "see" the scene, but in reverse like a photographic negative, the image burned into your retina.

Almost all the visible lines are straight and rectilinear, all the colors subdued, from the tan walls to the guard's gray uniforms. For some reason, my eye keeps going to a pipe entering my cell through the lattice-work and later I realize that it is one of the few curved lines in my scenery. Everything soft or tender of complex has been eliminated. Surfaces are all hard: tile, steel, concrete, brick. So sounds echo, harsh but indistinct.

Even the steel mirror on my wall is in a shadow and reflects only a blurred gray image. On the third day, still unshaven, I walk by a clear mirror on the cellblock wall that lets guards look around a corner and I see "another prisoner" appropriately crumpled and grim. It is my own image. Shocking.

One morning, at 8, I hear the whistle from the prison soap factory. I envy the inmates their work. Shortly afterward a truly comes to the cell door.

"Hey, want to work?"

As an unencumbered prisoner, I cannot be forced to work.

Page 8 1931/72
-4-

and a pink dress window. A day there and I'm out. Blacks shower together at one end, including my neighbor.

"You can make 25 cents a day."

I leap at the opportunity.

I mop the concrete floor of the cell block. As we work around the guard's desk, one young inmate says he's going to California when he gets out.

The kid next to him said, "What'll you do if you can't make it and you're on the West Coast?"

"I'll just pull another armed robbery."

An older guard, tipping back in his chair, said:

"That's where you're wrong. You better not do that in California. Non-ald Heenan, he don't f— around. He'll just put you in the gas chamber."

I'm called to the hospital to see the prison doctor. He has seen my shaving kit with the medication in it.

"I don't see any problem with giving him the scabroid," he says to no one in particular. "If he takes them all he can't kill himself."

He turns to some sleeping pills and then to me.

"I don't see why anyone needs medication to go to sleep at night. If he gets off his ass and does some work he won't have any trouble sleeping."

I decide not to tell him that we're locked in our cells from 17 to 20 hours a day.

A Hint of the Outside World

Even volunteering for work does not prevent the hours of idleness, but the idleness produces less idleness of thought than I expected. It is hard to think of life on the outside with any immediacy. Important places become blurred in memory in an amazingly short time.

Prison is total. It strains out clues to normal life and in the void every petty detail on the inside becomes important. Relations with other inmates take on a profound quality. Nothing outside the wall seems real any more. It may be no accident that television news is voted down every night.

Yet what fragments of the outside world do intrude become desperately alive. In the early morning hours, if I go to the door of my cell, I can see a small patch of sky through a window in the outer corridor wall. In the predawn hours there is a strange anxiety because the sky is not visible, an uncertain grasp of time and reality. The first light of dawn becomes exciting, the sight of drifting snowflakes intensely moving, the shadow of a bird in flight marvellous.

The first time we are permitted outdoors is an almost explosive experience, an enormous view of blue sky. The yard is an asphalt square 30 feet by 200, surrounded by the wall.

Another man and I walk the confinement; oblong for two hours in latter cold, but it seems like five minutes. He had been a woodworker in Pennsylvania and a hunting guide in Montana and is going to do "I can handle it," he says. "If I do the six I'll only be 30 years old."

The bird on the tower watches us and when we be in taking larger corners into a hard spot, he has to come out into the shadowed enclosure and stand on the outer parapet bunched into his coat. As we walk, we talk about weeds, animals in bloom, airplants, cities, rural life.

birds and dentistry. Two smart women old timey, magazines, one old Argoy in an old my culture from Pittsburgh. I read them all, cover to cover.

The next day is library call. Practically every prisoner goes and some of them make surprising selections. After meticulous analysis of the October TV linkings for Pittsburgh, it is exorbitant reading Dean Acheson, Simone de Beauvoir and Gore Vidal.

"You Here for Your Health?"

Anxiety about my cover, which means my safety, doesn't develop until the fourth day. It is at lunch. At my table is a man from our section who was friendly at first but then cooled off. He is well educated, likes to whistle Mozart and Bach themes, and has lots of reading material which he promised me but never delivered.

He has been increasingly suspicious of me and I have stayed clear of him, especially after I found out that he worked in the front office and has access to an outside telephone. If he called the county jail I was supposed to have come from they would never have heard of me. If he discovered that, the word would get to my friends who would make an unfriendly assumption.

"You here for your health?" he asks as we eat.

He means was I sent here to protect me from threats of other prisoners. I replied that I wasn't.

"What are you charged with?"

"Murder."

"Where?"

"Adams County."

"This is a long way from Adams."

"They think it will be a long wait before I get to the grand jury."

"They usually transfer area to Camp Hill."

I shrug. But I have a feeling time is running out.

I worry about confidantes other prisoners had shared with me; they might be remembered if they heard I was under an assumed name. I begin walking away from crucial conversation.

But conversation is hard to avoid. It has special meaning in prison relations, where men are thrown together almost at random and must make crucial decisions about each other.

Prisoners live in fear of each other and in trust at the same time. They have fear because everyone is under total control of the authorities, who can influence whether a man will serve two years or six, or live in a savage cell block or a civilized one, have a pleasant job or distasteful one, avoid punishment or be sent to maximum isolation. The prisoner is forever navigating this jungle. Some do it with weapons for self-defense or for coercion, weapons usually fashioned from scavenged metal. But the more common weapon is information that can win a recommendation for parole or pleasant assignments. So fear of betrayal is rampant.

But inmates fear each other and need to trust each other. They are united in common hatred of the criminal justice system. They are united in loneliness. Wives, girlfriends, parents, working colleagues, friends, the usual universe by which a man finds his identity and humanness, all are gone. In the void, fellow inmates become indispensable.

ence is, maybe where he comes from and what other prisons he has been in.

After that, it is up to him to volunteer information. The result usually is a great deal of talk, personal history and reactions to people and life. You enjoy the trust of others but at the same time fear it. Everyone is trapped together and each man has the power to harm the others. Trust and betrayal are potential in every relationship.

After I feel the twinge of paranoia, I stay out of the blind spots in the exercise yard, the spots in the corners out of view of the guard in the guntower, two of which I have found in the mental game of "escape" that everyone plays. I stay away from bunched-up lines at the dining hall. All unneeded, no doubt.

The Values of Prisoners

In his own way, Black is a puritan. "There was that m—ing car, free and clear, not a cent owed on it, and I couldn't drive it. I didn't owe a m—ing nickel on it, not a dime. Took me two armed robberies to get it, but I owned it free of debt."

I wonder why my best friends are men whose social values I abhor. They are mostly racists who in their careers hurt innocent people. They are often liars and braggarts, not only in their dealings with the authorities, which was required, or in hell sessions, which is forgivable, but also in their personal lives. Their talk is full of killing, shooting, pimping, treachery, treachery avenged and the endurance of suffering.

They exist beyond the bravado and toughness that in prison is necessary for self-defense. They have other feelings but they find no vocabulary for them. I marvel that for some unfathomable reason, after years of being bruised by their parents (Black's mother lashed at him when he was arrested at age 14; thereafter he had four stepmothers and five stepfathers), by their families, after years of chaos and abandonment, years of imprisonment in various degrees of savagery and subjugation, their spirit is unbroken. They refuse to be beaten. Some are strange and withdrawn. Most are not.

One day, as I watch the population file out of the auditorium, they suddenly strike me as not so different-looking from the students I had seen a few months before at the University of Wisconsin: same cool attitude, beards, sideburns, the quick quizzical eyes, clothes worn shoddily-expensive, more—but very cool.

Most of the men are in their late 20s. If the men at Huntin'don had four more grades of median school achievement and \$3,000 more in potential median income, they could be taken out of the auditorium of the state university instead of the state penitentiary. There is much talk about their experience at "Indiana State" and "Ohio State" but they mean state pens. The universities of the poor.

The morning I am supposed to be pulled out of prison I go to work as janitor in the schoolroom. I begin to wonder if they will pull me out today. Maybe there is a big crisis on the outside and everyone will forget.

Part 1/31/72

Just before lunch, I am ordered to the identification office. They are finally going to complete my records, take my mug shot and fingerprints. Time is running out.

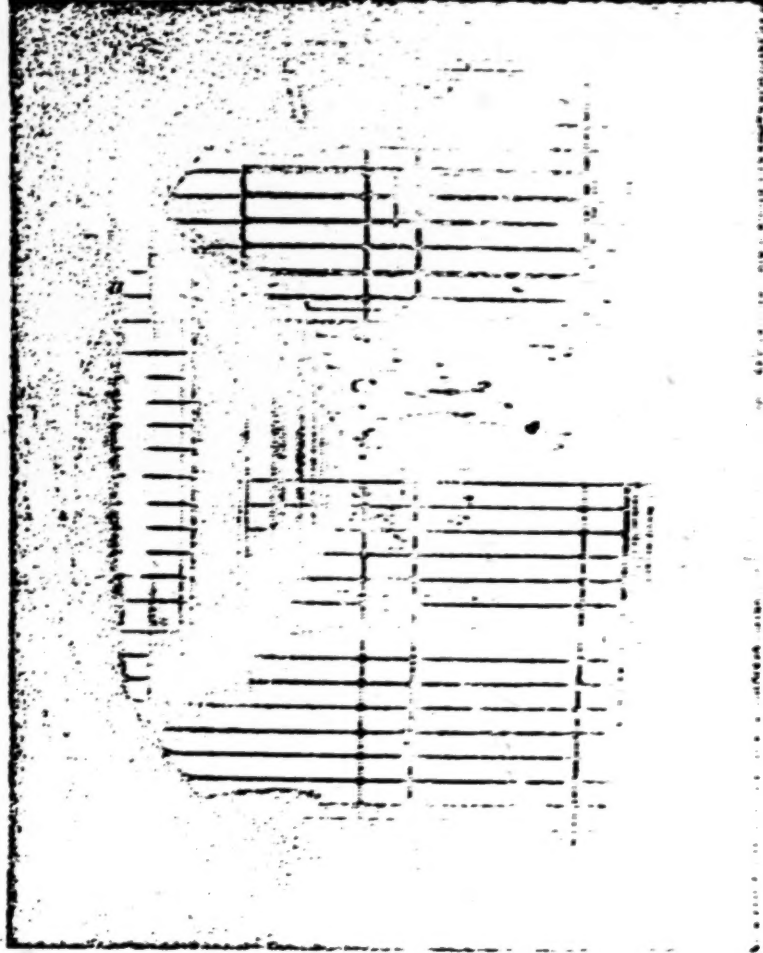
I give the man my name, charge, county and hearing judge. He asks my Social Security number. I remember the briefing in the attorney general's office: "You don't remember your Social Security number. Be clear on that. If they have your Social Security number, they can pick up their phone and in 30 seconds know everything they need to know about you."

The fingerprint man is working on me when a clerk walks up. "Hey, one of these guys has to go back to the county today. They're coming for him at 2 o'clock."

Two hours later, after my sixth day, two men in plain clothes issue the prison a "Body Receipt" for prisoner Benjamin Bersamian who, 49 feet beyond and two minutes later, outside the wall in the unlimited air, ceases to exist.

NEXT: The Male Prison

Post 1/31/72
-6-



Looking into Lewisburg's main corridor . . . "carefully but bureaucratically run."

by Margaret Thomas—The Washington Post

Bureaucratic Overload Turns Justice to Misery

Third of eight articles.

By Ben H. Bagdikian
Washington Post Staff Writer

They look like a Norman Rockwell painting of democratic American life—kindergarten kids, some Orientals, some black, some Caucasian, cheeks ruddy in the morning cold, skipping and laughing, paired hand-in-hand, with two good-natured teachers guiding them along the sidewalk of Baxter Street.

A few of the children look curiously at the scene across the street. Fourteen men, all blacks, handcuffed in pairs, shivering in their shirt sleeves, jump out of a police van and disappear into a steel doorway of the Manhattan House of Detention, the Tombs.

The first thought prompted by the sight of innocent eyes watching the gray scene is, "Thank God they don't know what it's like inside." The second thought is, "Perhaps they should. Some of them, some time in their lives, will be held in a jail."

Of all places of restraint, jails are the worst. They are detention centers where men, women and children get their introduction to the criminal jus-

tice system, where they are held after their arrest, where they stay awaiting trial unless they have bail money, or where they serve short sentences for minor crimes. Most are designed for only short stays; prisons are for sentenced people.

But for people too poor to make bail, an overloaded and creeping bureaucracy of justice keeps them in compartmented misery for weeks, months or years, the majority of them not yet convicted of anything.

The Tombs is famous: 12 floors of cages, the scene of a spectacular series of prisoner rebellions in 1970 against overcrowding, racial abuse, vermin, court delays. It is now more than a year after the rebellions were put down with promises of reform.

I enter the public door.

Minutes later, the chairman of the City's Board of Corrections, William Van Den Heuvel, arrives, an old Kennedy hand in the Kennedy manner, big, shell-rimmed glasses, full of bounce. We are admitted and start taking elevators to various floors.

See PRISONS, A11, Col. 1

Each floor has a double tier of cells with adjoining small concrete and steel enclosure where prisoners spend the day playing solitaire or dominoes. As guards let us inside, Van Den Heuvel surrounded by men, like a feudal lord beseeched by beggars inside the castle wall.

"Mr. Van Den Heuvel, please help me. They've lost my papers and I've been here four months."

"Mr. Van Den Heuvel, I'm afraid I'm gonna go out of my mind. They transferred me from Rikers a week ago but they didn't bring my medication and these headaches I can't stand."

"Please help me. I'm an addict. I've been on heroin 17 years. I got on a methadone program on the outside and got off heroin. But I got arrested and brought to the Tombs. I'm on methadone now but they tell me that when I get out tomorrow I can't get back on the street program because I missed treatment and they got a waiting list that takes 30 days. I'm afraid I'll go back on heroin."

"Please help me"—his hands reached through the bars of his cell—"I'm fucked up because I'm a homicide case. But the sink here leaks and there's water on the floor all the time. My feet are wet. Can't you do something..."

One whole floor holds homosexuals. In another floor a dozen young blacks in enthusiasm in military formation. Our escort, Capt. Paul Felton, 17 years a guard, says, "Look at 'em Panthers. Black Panthers. Killers."

An older white man with a painted smile cries out from a locked cell. "Hey, come here. I'm here by mistake. I'm fucked up by mistake. I'm a native New Yorker. I know my way around. I've been to Harvard. I've been to Harvard twice. I know my way around. They made a mistake. Hey, hey, listen..."

Let Van Den Heuvel what they do with psychotic prisoners. "If the psychiatrist says a man is psychotic, the man goes to Bellevue. Bellevue will hold him only while he's as fit, meaningful, practically unmanageable. Then they send him back."

Why isn't he sent to a mental hospital?

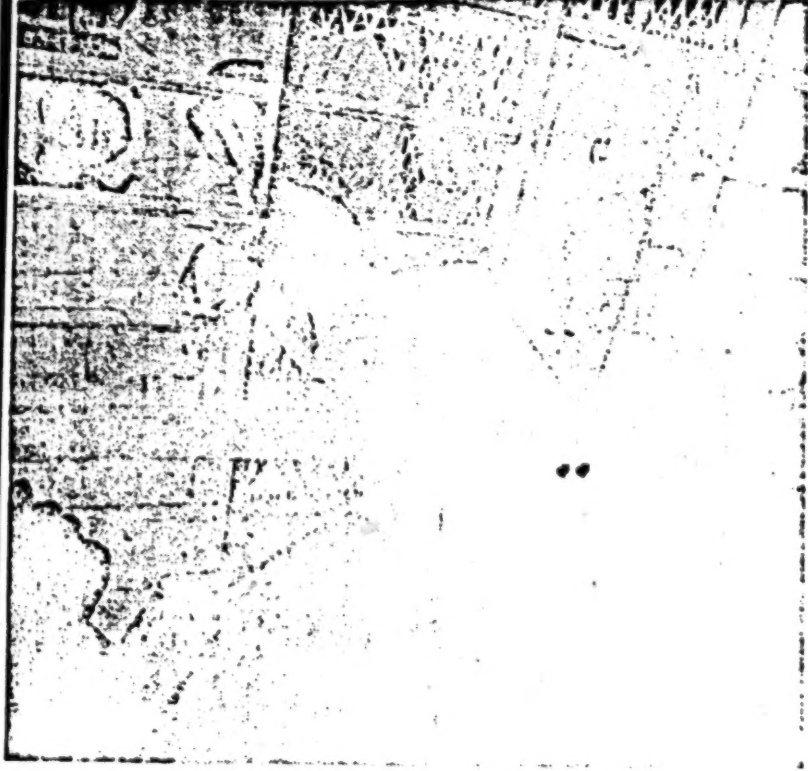
"No way. They're full, too." He guesses that 15 per cent of the prisoners are mentally ill. That would be about 250 men. There is one full-time psychiatrist.

Epidemic of Suicide Attempts

There have been 11 suicides and over two attempts in the last year. In the last few months, there has been an epidemic of men breaking the toilets in their cells and attempting suicide with the pieces. It takes the city nine months to replace a toilet.

Many of the riots is still strong among prisoners. One shouts at us, "Hey, new-que run. Ask them about the teachers and the rats. Ask them." Capt. Felton yells at the prisoner, "Show me a rat! Go ahead, show me to me. These aren't rats, they're mice. Don't you know the difference between a rat and a mouse?"

The day the riots began, the Tombs with a rated capacity of 102 men, had 1,116 prisoners, 37 per cent overcrowded, the day I visited, 14 months later, the rated capacity was 373 because of damaged cells, and there were 1,133 prisoners, 63 per cent overcrowded.



—The Washington Post

Prison staff gives an inmate methadone at the Tombs in New York.

After the riots, the city somehow found \$2 million in emergency funds. It added 24 tons of steel on each floor to increase protection of the staff.

Outside, the school kids were long gone. Over the door of the Tombs court complex is the inscription: "Justice Is the Firm and Continuous Desire to Render to Every Man His Due."

And under that a bronze plaque notes that this building was erected on the site of the underground railroad that helped free black men from slavery.

New York City is not alone in the misery of its jails. Last year a group of inmates in Baltimore City Jail petitioned the city court for relief from the following claimed treatment:

Officers in the jail regularly forced some retarded inmates to perform sexual acts on the officers; other retarded inmates were chained to the bars of their cells and beaten with keys; inmates in Sections N and O, while confined and peaceable in their cells, were forced by guards because inmates had protested their treatment; when an inmate told a guard he was suffering from narcotics withdrawal the guard forced him; inmates had been warned not to talk or write about conditions in the jail.

Riots over overcrowding and all that means—dirt, disease, homosexual rape, hysteria, exposure to psychotics—bring promises of relief.

In Wayne County Jail in Detroit, conditions did not lead to riots. Instead, there were 33 suicide attempts in two months.

Just as city jails are, rural jails have their own special morbidity. Forrest County Jail, in Hattiesburg, Miss., isn't the worst but it isn't the best. The building may collapse. The cells are filthy, full of vermin, dirty races and paper. The brick walls are so porous that some prisoners escaped by scraping away the mortar between bricks with a spoon.

In one year, the jail held 2,657 drunks, 628 people accused of felonies and 52 believed insane and awaiting commitment proceedings. It has held 12-year-old runaways and lost children in the same jail. Trials are held only every three or four months and it is not unusual for a prison to wait in jail nine months before anyone decides if he is guilty.

Until this year, the sheriff in charge of Forrest County Jail got no salary. Instead, he got \$1 for every arrest he made, 10 cents a mile for transporting the prisoner from place of arrest to the jail, \$2 for lodging the prisoner into the jail, and \$3 for every prisoner held each day in the jail. There was no public money for food and other maintenance of the prisoners, so it came out of the sheriff's fees.

The state of Mississippi, as of this year, ended the fee system for sheriffs, but the practice continues in hundreds of counties across the country, rewarding sheriffs economically for making maximum arrests and jailings, and punishing him economically if he feeds and maintains the prisoners decently.

Forrest County is better than most in one respect. Its grand jury has regularly condemned the jail for years. Typical was their finding in 1968: "The grand jury is of the unanimous opinion that both the city jail of Hattiesburg and the county jails of Forrest County are unfit for human habitation."

Post: 2/1/72
-2-

United States. There is no way for administration or imposing civilized standards on them.

The U.S. Law Enforcement Assistance Administration has counted those that are authorized to hold persons two days or more, and there are 4,037 with 161,000 men, women and children in them on a given day (5 per cent women and 5 per cent children).

LEAA says 86 per cent have no exercise or recreation for inmates; 90 per cent have no educational facilities; 80 per cent have no medical care; and 14 per cent have no flush toilets.

There are over 100,000 cells in these jails and more than 5,000 of them are over 100 years old. About 25 per cent of these cells are over 50 years old.

More people than ever are headed for such places. The President's Crime Commission in 1967 said that 40 per cent of all male children now living in the United States would be arrested for a nontraffic offense some time in their lifetime. Most of those will spend some time—hours or days or weeks or months—in a local jail.

The Planning of Prisons

Unlike jails, prisons are built with the knowledge that they will hold inmates under sentence, usually for more than a year and sometimes for life. These institutions, usually for adult males, are not accidental in their design and operations but are carefully planned and constructed and operated by large bureaucracies of full-time careerists.

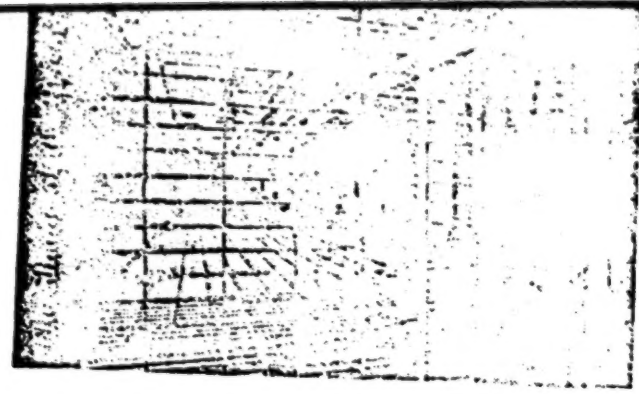
It is depressing to consider what some men will plan and operate. It took a law-suit in Virginia to expose the following treatment in the state penitentiary:

An inmate who attempted suicide had his neck taped to his cell bars for 14 hours and then was left naked in his cell for 17 days; a black prisoner sentenced for help in solitary confinement for one week before dying unattended of sickle cell anemia; one inmate was locked in his cell without being let out for 743 days.

Federal Judge Robert R. Merhige ordered drastic changes in the Virginia prison system to eliminate atrocities by protecting prisoners' rights. The head of the state prison system said these rights are "not practical in the prison situation."

The State of Alabama, proud of receiving all federal aid, built a new maximum security prison, the Holman unit, in Atmore, Alabama.

Holman was originally planned for 500 men; it now holds 840. There is not one classroom, no gymnasium, no auditorium, no hospital, no teachers, no psychologists, no social workers. There are very few guards—about 18 to a shift—and they are paid \$3,900 a year. The prison is heavily grom-



The prison is organized with some open dormitories, some multiple-cell-pancy cells and special cells for punitive segregation. Unfortunately, the television monitors show only shadows at night and men in dormitories make tents of blankets that the television can't see through. Homosexuals roam the dormitories freely and there are fights, stabbings, homosexual rapes and homosexual prostitution.

Rather than risk assignment to dormitories or to work details under brutal conditions, men sometimes prefer punitive segregation which is not exactly luxurious: the punitive cells have four men to a 5½-by-7½-foot cell with nothing in it but a single blanket and a five-inch-wide hole in the floor for a toilet. On one day, there were 145 men in segregation.

To avoid assignment to dormitories or segregation or work details with guards who are especially brutal, prisoners often cut their own Achilles tendons, an act that occurs about once a week.

The prison is shoddily built, leaks in the rain and leaks between floors. One official who works there says, "It must have been designed by a psychotic." The present warden was not associated with its design or construction.

Asked how he survived at Holman, one inmate said:

"One, you shoot dope. Two, you find yourself a boy and make out sexually. Three, you burn yourself out reading. Four, you just sleep."

The Rule of Silence

The deliberate dehumanization of inmates is not limited to Alabama state prisons.

The enlightened state of Wisconsin forbids prisoners in its maximum security penitentiary at Waupun to speak in their cells in the evening. In a special cell block, inmates may not speak at all and one inmate said he had spent 11 years without speaking except when spoken to by a guard.

Portsmouth County Jail in Virginia is a handsome, new high-rise structure overlooking the beautiful Elizabeth River and Norfolk harbor. It has a peculiar architectural feature: outside each barred window is a concrete slab held eight inches from the exterior wall. Its purpose is to prevent prisoners from seeing the view.

The most carefully designed prison system in the country is the Federal Bureau of Prisons. It has often been run with enlightened, humane administrators in Washington who recognize the prisoners are human beings who will return to mingle with their fellow citizens.

But Congress is the real boss of the federal prisons. In the past this has resulted, at best, in near-neglect. There has been a Senate committee on prisons since 1924. Its annual appropriation of \$5,000 was usually turned back minus the cost of a few senatorial trips to a federal penitentiary for what the senators informally called "cockroach counts."

Many politicians, including some of

Post 2/1/72

...have been shaping
...in ways that make it
...society from crime.

...problem in American pri-
...isolation in rural places,
...without public transportation.
...prisoners cannot visit; mar-
...inmates break up and normal
...The prison cannot find
...members who have rapport
...inmates, who are overwhelm-
...urban and after a majority
...The prison has difficulty getting
...teachers, psychologists,
...vocational trainers, soc-
...to move to remote coun-
...And if a prison decides
...prisoners or teach them
...skills before their release,
...few rural schools or factories
...where this can be done.

Nevertheless, prisons continue to be
...It is precisely the wrong places.
The usual reason given is that land
...and the isolation is better
...Land is usually cheaper
...but that is not always a large factor;
...are full of expensive hardware
...as much as \$22,000 a bed to
...And most rural prisons have
...escapes, while there has
...been an escape from the most
...of all institutions, the Tombs,
...of the heart of Manhattan.

The real reason prisons are located
...the country is that legislatures used
...controlled by rural politicians
...placed the prisons there as profit-
...and opportunities for
...factories.

Yet if prisons have not escaped,
...for visitors is a difficult
...for any federal prison, since
...inmates from all parts of the
...though located near a big
...old simply travel. But federal
...like state and local ones, also
...from rural locations in obtain-
...staff from the sur-
...countryside and providing
...to work, study and volunteer
...for its programs.

The newest penitentiary in the
...system is the maximum secur-
...at Marion, Ill.

The prison was planned in 1923 and
...as a maximum security unit in
...It is eight miles from the town of
..., which has a population of
...The nearest city of any size is
..., Ind., 75 miles away. The
...metropolis is St. Louis, 100
...miles away.

there was the availability of a federal
wildlife preserve and security, since it
replaced Alcatraz. The real reason is
that the late Sen. Everett Dirksen, in
addition to being Senate minority
leader, was ranking Republican on the
Judiciary Committee, which has juris-
diction over federal penitentiaries.
And he wished a federal facility in the
southern tip of Illinois, where his
strength lay and which at that time
was suffering from economic depres-
sion.

For the first time, the past year has
seen interest by some committees and
individual members of Congress in the
basic problems of prisons, prisoners
and criminal justice. A few have gone
into prisons for the first time to talk to
inmates.

Their nearest stop is Lewisburg fed-
eral penitentiary, impossible to reach
by public transportation, spacious, im-
probable Gothic arches and hand-
carved stone in the dining room, care-
fully but bureaucratically run (visiting
rules: one kiss at the start, one kiss at
the end), not without the pathology of
most prisons (an officer told one mili-
tant prisoner, "Why don't you get
yourself a boy and settle down") but
better than most.

Not all prisons in America are grim
dungeons with iron idleness. Here and
there, the system has produced ameni-
ties that begin to resemble outside life.
At California Men's Colony East, at
Los Padres, a medium security prison,
one inmate was disciplined for break-
ing a window when he hit a golf ball
too hard on the prison's miniature golf
course.

But this does not eliminate the mor-
bidity or the punishment. A survey of
877 inmates showed that most thought
that from 30 to 50 per cent of the men
would become involved in homosexual-
ism before they left the prison.

At Leesburg, N.J., and Vienna, Ill.,
state prisons are designed to avoid the
concrete-and-steel cage atmosphere.

There are many Americans, includ-
ing many legislators, who feel that soft-
ening the harshness of male prisons
will diminish the punishment and
therefore encourage crime. A major
theme of congressional appropriation
hearings for prisons is the fear that in-
mates will be placed in "company
clubs." It overlooks the fundamental
punishment of any prison: to be de-
prived of liberty.

NEXT: Women in prison

The Shame of the Prisons



The campus-like grounds of the reformatory at Alderson, W.Va.
By Margaret Thomas—The Washington Post

Female Homosexuality Prevalent

Fourth of Eight Articles

By Ben H. Reedikian
Washington Post Staff Writer

So far as anyone knew, she had a conventional sex life on the outside. But shortly after she arrived at the Federal Reformatory for Women in Alderson, W.Va., she stopped telling people her name was Charlotte and said it was "Charlie."

Charlie soon discovered the mysterious ways some of the inmates get hold of men's clothing—desert boots, dunnies, T-shirts, zipper jacket, visor cap. She began walking with a masculine swagger, talked tough, held a cigarette in the

corner of her mouth, and shortly afterward established a relationship with another woman inmate whose manner was obedient and submissive while Charlie acted strong and protective. They were thought of by the other inmates and by the staff as husband and wife.

One of the peculiarities of women's prisons is wide-spread homosexuality. Estimates run to 60 and 80 per cent, far higher than for men's prisons.

But homosexuality is only one of the distinctive qualities of female imprisonment.

Women's prisons are the step-

sisters of corrections. The literature on them is sparse, statistics on the female prisoner even less reliable than on males. The massive nine-volume report of the President's Crime Commission in 1967 barely mentions women.

The unkindest cut was from prison reformers, whose publication, The Free World Times, listed prisons that experienced unrest after Attica but ignored the sympathy strike of 120 federal women prisoners in West Virginia who were teargassed and 66 of whom were punitively transferred to other states.

See PRISONS, A10, Col. 1

Prisons Estimated at 80%

PRISONS, From A1

One reason for lack of attention is: all numbers. Of 21,000 federal prisoners, 800 are women. Of the third of a million prisoners in state, county and federal imprisonment on any one day, 5 per cent are adult women.

But another reason is the peculiar status of women in criminal justice. In the offenses judges tend to be more "giving of 'the gentler sex.'" But when a woman violates moralistic codes, she gets harsher treatment than men.

Prostitution is a major cause of female imprisonment. For every prostitute there are dozens of male customers. The male participant is seldom arrested and when arrested seldom tried and when tried seldom imprisoned. In 1968 in the District of Columbia, 112 men were prosecuted for patronage of prostitution; 800 women were prosecuted for soliciting.

The impact of imprisonment on women appears to be profoundly different from that on men. Except in the most severe jails and state prisons, women inmates do not suffer the physical brutality and sense of imminent threat typical of the average male prison.

For one thing, women's prisons usually look less grim. They tend to resemble low-budgeted junior colleges. The tubs are called "cottages" and they may or may not have bars on the windows.

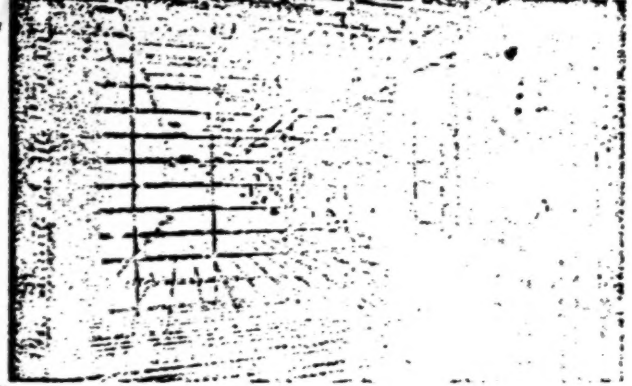
Women's prisons vary in their discipline, but all are less regimented and milder than the average male prison. Disruption of Families

But the locked-up woman has special aims. The worst is separation from her children. At Alderson, 50 per cent of the inmates have dependents. When they were convicted, the law wiped out their rights as mothers and made the children subject to adoption. Once the children are placed in a foster home, the adoption agency may forbid the mother to communicate thereafter with her children.

Another special trauma is prison's disruption of the conventional role assigned females in society—homemaker, helpmate to a male, repository of the gentle virtues in humankind. Women are usually brought up to believe as though they are tender, accepting and sensitive. At these are antithetical to prisons.

Males are conventionally taught that they are supposed to be strong, tough, aggressive and able to endure privation. Prison reinforces all of these.

While homosexuality is common in women's prisons, it is more so in women's. Most women are conditioned to feel less than complete beings unless they have a man. But it is socially acceptable to touch each other, hold hands, and kiss. Confidential relationships among women in normal society are more common than among men.



Attitudes Toward Homosexuality

In some women's prisons, staffs are obsessed with homosexuality and inmates are literally forbidden to touch each other. In such places, women seated in groups to watch television or movies must keep an empty seat between each person. This does not stop homosexual affairs which, like heterosexual affairs in the outside world, have a way of transcending barriers. But thoughts of homosexuality dominate such institutions.

Virginia McLaughlin, warden at Alderson, speaks in a relaxed way about it.

"One of the problems in a women's prison is staff preoccupation with homosexuality. My own personal feelings are that what goes on between consenting adults is their own business. We try to say that we're not moralistic about it."

Some inmates and former inmates of Alderson dispute the total tolerance. "At Alderson," one former inmate said, "the staff will bust you if they catch you."

"Mrs. McLaughlin isn't sure that all the apparent homosexuality is contained in physical relations.

"Who knows how much real homosexuality goes on here? There's a lot of role-playing. I suppose that 50 or 60

per cent of the residents here are in boy-girl play. Within our culture, if you ain't got a man, you ain't got nothing. That model carries into this institution. So a lot of people dress and act in boy-girl ways. But a lot of it is just role-playing to fill out the public image we've said women are supposed to project."

She thinks that whatever happens sexually at Alderson is reversible.

"If you come into this joint heterosexual, you leave here heterosexual. You may play games here and spend 20 years doing it. But darn few women who have developed a permanent pattern on the outside get turned around permanently in here."

Mrs. McLaughlin, the first married warden of Alderson—she married the local football coach—presides over the most famous of women's prisons, the only federal one specifically designed for females and one obviously more relaxed than the mass of state and county institutions.

Like most prisons, Alderson is 100 miles from nowhere. There is no public transportation. The train doesn't stop there any more, only at the Greenbrier resort hotel 20 miles away. It is an unlikely-looking prison. The setting in the foothills of the Appalachians is among forested hills and fast-moving creeks. The security is less than that in some fashionable girls' schools, the low chain-link fence no challenge to a moderately athletic woman. It has 17 residential buildings in red-brick, vaguely Georgian colonial style, actually called "dormitories," arranged in quadrangles around tree-filled malls actually called campuses.

Mrs. McLaughlin is a shrewd, sharp-eyed, sophisticated woman whose office is decorated in abstract non-industrial art and whose non-governmental issue coffee table has a shingling of *Blackboard* magazines—The American Scholar, Intellectual Digest, Trans-Ac-tion, New Yorker...

Prisoners are called "residents"; they can dress almost as they wish and pay a lot of attention to the latest fash-ions. The food is good as institutional feeding goes, rooms are decorated indi-vidually and there are few matrons vis-ible to the visiting eye. Two honor cot-tages are self-governing and have no staff in them at all (and are unkindly called "snitch houses" by other in-mates; in prison an informer is known as a "snitch").

Mrs. McLaughlin knows she has the perennial problem of modern prisons: white rural staff, hired from the sur-rounding area. In total control of the lives of prisoners who are mostly from big cities and mostly blacks.

She has a staff of 261 overseeing 530 inmates. Eleven per cent of the staff is black, compared to 54 per cent of the inmates.

"It's very important to have blacks on the staff, important for the role they play. The black residents need to see blacks who have made it and are 'square'."

"There's an immediate communi-cations gap. There's the gap between the very young, inner-city residents and the older, white, middle-class oriented staff, but even between black staff and black residents there can be a gap no-body likes to talk about, a class gap."

One afternoon recently, she had her final interview with a young, fashion-ably dressed black woman who was about to join the staff. The woman looked at her left. "I hear you, ma'am." Mrs. McLaughlin smiled jani-cally and replied "Why don't we drop that 'a'—Thank you ma'am" is lower-class white, you know."

Mrs. McLaughlin is sure that women prisoners are changing in atti-tude.

"Our drug problem's not so differ-ent. I looked at some board meeting minutes from 1959 and they had 40 per cent addiction then. But we are seeing more young offenders and a small but growing number of women who are ac-tive parties in regular crime. They don't just drive the getaway car or hide the money any more. They're pointing the guns."

"And we have militancy. They have a just concern with their rights. That's the way it is. Blacks have taken all they are going to take, being kicked around. Everyone has a right to say how they're feeling. Inside or out, we have to be concerned with individual rights. I don't care whether a person is in prison or out, they have fundamen-tal rights."

Who the Inmates Are

Mrs. McLaughlin is asked about the unprisonlike "dormitories" and "cun-puces." She enjoys smashing the ster-ecotype of the hardhat warden issuing public relations muck.

"I don't care if this was the Green-brier Hotel, it isn't fun. This is a prison with 500 miserable people forced to be together. It can't be good, they can't go home, they can't relieve the pressures by going out to the street to a show."

she is not euphoric about the power of an authoritarian figure bringing change. "These aren't girls," she says, "they are women. They're here, and I'm not their mother."

But many of the inmates are, in fact, girls. Seventy per cent of the residents are 30 years or younger and a few are 15 and 16. They come from 40 different states and about 30 of them from for-eign countries, convicted of crimes in the United States, usually smuggling dope. Thirty per cent have a history of prostitution.

"How are you going to teach a woman a trade that will earn her \$1.25 on the outside when she's been in the habit of making \$500 a night?"

If the women work in the prison in-dustry they make from 19 to 47 cents an hour.

Forty-two per cent have a history of narcotics use. Only nine per cent have ever had a significant alcohol problem.

Like all prisoners, women inmates do not lack intelligence but have lacked sufficient schooling and what school-ing they received obviously was def-icient. About 60 per cent have average IQ's or higher. About half of them went no higher than 9th grade but they, test out at a median 64 sixth grade level.

They are serving federal sentences for postal violations such as mail fraud, 23 per cent; narcotics, 20 per cent; forgery, 18 per cent; involvement with stolen goods in interstate trans-portion, 12 per cent.

There have always been about 30 robbers and about 30 in for conspira-cies of various kinds, with only a few murderers and kidnappers.

Federal offenses are different from state. In one state prison for women, half were in for killing their husbands or boy friends and most of the rest for prostitution.

Like male prisoners, 90 per cent at Alderson have histories of prior ar-rests, with criminal arrests starting as young as age 7. Half of them earned less than \$2000 a year before their im-prisonment, but only 26 per cent had ever been on welfare.

The statistics support the bias of the criminal justice system and of the out-side society. Mrs. McLaughlin tells in-terviewers, "If you're poor, if you're black, if you're twenty-six and you're a woman, the dice are loaded against you."

She likes to tell that to the residents and then add:

"But prisoners have responsibilities. I'm sorry if your mother didn't love you and I'm sorry if you have no money, but you've got to face the fu-ture."

"An Emotional Binge"

For all its bucolic grace, tolerant at-mosphere and the warden's antipa-thon of traditional complaints, Alder-son has had its troubles. It has its "hole," the segregation cells in which women are punished by being locked in a bare tiled cell with no transparent windows, a toilet, and a cot. There are tensions and bitterness.

In September, residents of Alderson held a memorial for the prisoners in Attica. It evolved into a strike for re-forms at Alderson, with 130 residents occupying the prison's garment factory building for four days. Mrs. McLaughlin sent in food and blankets for the strikers and received their list of 42 demands.

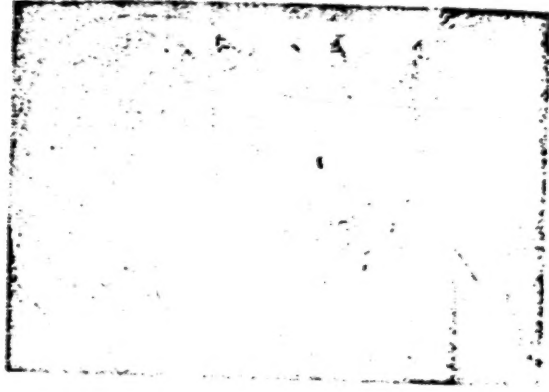
she has been serving as warden since 1963. If there were true to do as reasons to be given for denial of pa-roles; more halfway houses; work re-lease programs for qualified inmates; more caseworkers on the staff; more psychological counseling; more voca-tional training; better education within the institution; published standards for changing inmates' level of restraint; unlimited mail; disinfectant for all cot-tages; reasons given for severe discip-pline, and so on.

But at some point, Mrs. McLaughlin decided the strike had gone on long enough. She called in help from other federal prisons. Male guards went through the campus, used tear gas, rounded up a predetermined list of in-mates thought to be ringleaders, put them into a waiting bus (by mistake in-cluding one staff member), and trans-ferred the women to maximum secu-rity institutions in Ashland, Ky., and Seagoville, Tex.

Mrs. McLaughlin refers to the strike as "an emotional binge" and the result of "two or three very troubled people; our psychiatrist says that we have about 50 people who are in and out of psychosis all the time." But the de-mands were consistent with what most correctional administrators are them-selves asking for, at least when outside their own institution.

Nevertheless, Alderson is a far more humane institution than the average state and county prison for women. Elsewhere there are female prisoners subjected to terror and degradation and, the same kinds of psychological pressures that afflict male prisons.

Tom Murton was a warden in Arkan-



VIRGINIA McLAUGHLIN
... sophisticated warden

Part 2/2/72
-3-

...as who unearthed murdered inmates and tried to reform the institution-alized savagery before he was fired by Gov. Winthrop Rockefeller. Because prisons are typically closed institutions protected by secrecy, their worst characteristics usually come out only with a riot or after an administrator has been fired.

A warden who preceded him at Cummins prison farm, Murlton says, had an electric buzzer installed next to his bed in the warden's residence on the grounds of Arkansas State Penitentiary. When he pulled the button, the staff would select a woman inmate to go to the house to perform sex acts on the warden.

Black women were forced to "clap" grass on the prison grounds with their bare fingers, and for meals were permitted to eat only whatever white women prisoners left behind them. Women prisoners were beaten with leather straps.

When prisoners under sentence to the state prison were transported from the local county jail, all the prisoners—men and women—were put in the same covered van and it was usual that the women began their prison term by being gang raped in the van.

Lawsuits claim brutality to women in some men's institutions. In Louisiana, seven women prisoners brought suit recently in a federal court claiming that at the state prison the seven women were punished by being beaten, stripped to their underwear, three of them handcuffed together in one cell, four of them handcuffed together in another cell, and passed repeatedly with a spray that burned their eyes and made it difficult for them to breathe, and that this went on for four days.

Last October in Miami, a civic committee of business and professional women protested "inhuman living conditions" for female prisoners in Dade County Jail.

The committee said women, often incarcerated for months, had total recreation facilities consisting of one incomplete deck of cards. It said 10 women lived in one large cell, rain leaked through windows soaking beds, very young girls in jail for their first time were left alone with experienced older prisoners and no exercise was permitted for weeks at a time.

In Michigan, Carole Morgan, a teacher for two years for women prisoners in the Detroit House of Corrections, said that an 18-year-old girl prisoner, finishing her term on a drug charge, once came to her hysterical because shortly before she was scheduled

for release she was visited by a detective from the city narcotics squad who told her that if she did not become an undercover agent for them they would make sure that she served more time in jail.

Listening to the Inmates

Jane Meyerding, 21, was held in Monroe County Jail, N.Y., while being tried on charges arising from raids on Selective Service and FBI offices in Rochester. She said she and other women were stripped and searched before and after each court appearance, a process in which they did not register but did not cooperate.

"When we were convicted and brought back to the jail they had a real field day ... There was a man there when we were searched ... The men brought us up the stairs and when it was my turn he put the handcuffs on me and dragged me over to where they wanted to strip-search me. He didn't take too much part in the actual stripping because I was just being passive ... During the trial I wrote the judge a letter and he told the marshalls to come over and stop the strip searches. But after the conviction they started all over again."

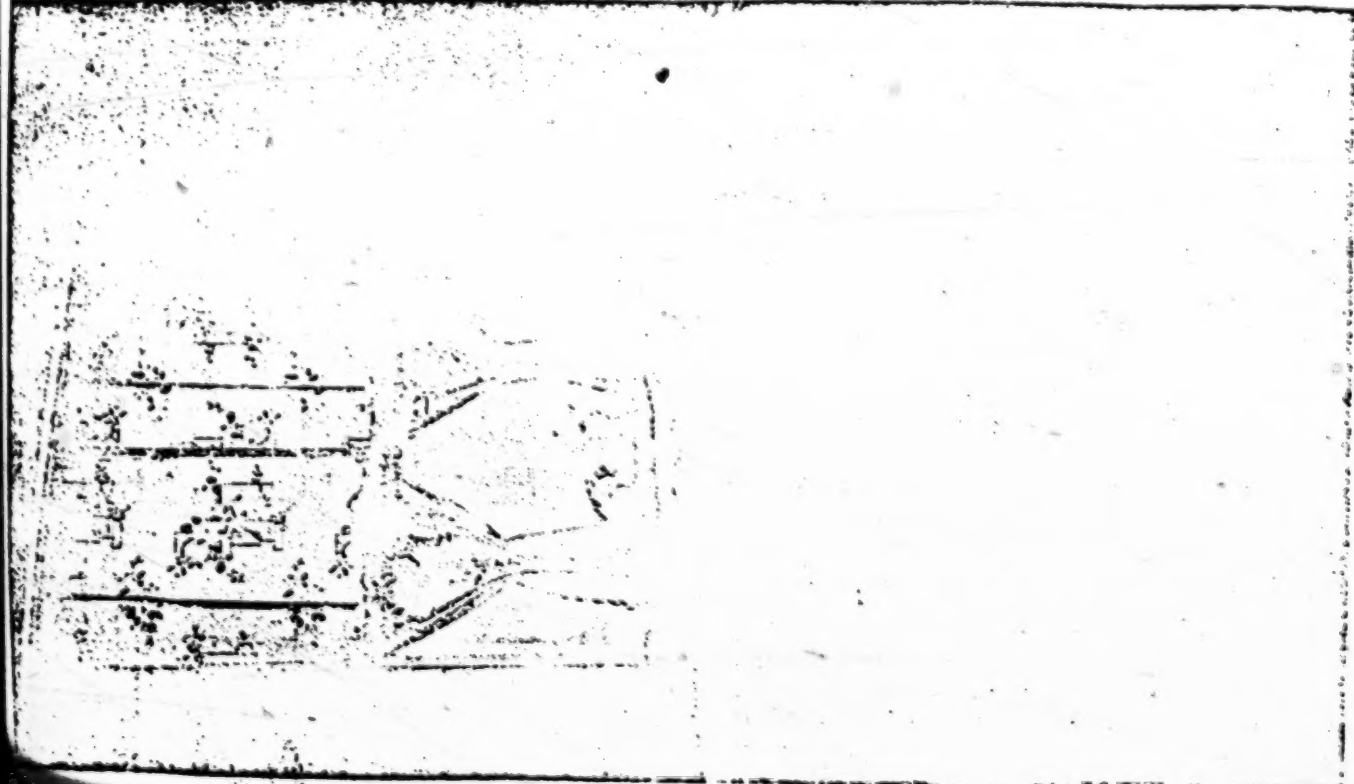
Compared to the institutionalized cruelty and neglect typical of many women's prisons, the residents of Alderson are fortunate and the experienced ones (60 per cent have been in prison before) know it. But even there they suffer destructive anxieties and psychological pressures.

For about an hour, the Resident Council, two women elected from each dormitory, discussed their anxieties. About 23 gathered around a long, polished table near the warden's office. Some of the women were stylishly overdressed, the others casual and cool. The accents ranged from Deep South black to university British. To the casual eye, it could have been the board meeting of an integrated middle-class PTA.

Some of the bitter complaints would require relocation of Alderson. For example, the separation of women from children because of Alderson's remoteness and lack of public transportation. Of twenty-eight women, 22 raised their hands when asked how many had minor children. When asked how many had not seen their children since their imprisonment, the same number of hands went up.

But the most bitter and impassioned complaint would take no revolution: quick response on parole applications, together with a detailed reason for denial of parole. At stake are years of a woman's life, but present procedure is casual.

Part
2/2/72
4-



By Margaret Thomas—T. A. Washington Post
Curtains brighten a woman's room in the Alderson, W. Va., prison.

Part 2/2/72

-5-

A parole examiner visits the institution and interviews the prisoner in sessions that inmates say range from three to five minutes, with a few 10 or 15 minutes. Then there is silence for up to four months. If the parole is denied, there is no reason given except, possibly, "lack of progress."

Nothing causes more frustration in prison than the mysterious and indefinite working of parole boards.

As one young woman, interviewed at random in her dormitory, said, "I got five. I know I did wrong. I'm doing good time. I take courses. I have a good record here. My mother is taking care of my kids. I get no answer from the parole board except not enough progress."

"I ask what that means and they can tell me. Why keep trying? I mean, if you want to drive someone crazy, then put them in an institution and never let them know when they're getting out."

In that respect, men and women in prison have a common experience.

Next: The initiation — juveniles.

The Sumo of the Prisons

Juvenile Prison: Society's Stigma

Fifth in a series

By Ben H. Bagdikian
Washington Post Staff Writer

The price list is posted in big red letters for every kid in the classroom to see. Coffee break? \$10. Sit in the teacher's swivel chair for a whole period? \$20. Take a trip to the library for a book? Only 50 cents.

Get out of here early? \$7.95. You don't have the money? Just sign one of these contracts. "I will remain in my seat during the last-thing period. I will not talk to other wards . . . up to \$20 payment. "I will not fight with Chien over the TV program"—\$100. "I will write out as closely as I can remember exactly what I said and exactly what Chuck said when we fought and then I will write out what I could have said to avoid a fight and still get my bednet, acetone."—\$200.

The assorted young burglars, car thieves, murderers, rapists and robbers are being "paid" to behave the

way the state of California wants them to.

They are not charged or paid United States dollars but "Karl Holton Dollars," the medium of exchange in the place. But in Karl Holton Dollars they really mean it. Coffee can cost \$40, a pool game \$80, a five-minute phone call \$150, an afternoon nap \$23.

Each boy carries a small blue book, "Karl Holton Bank" with his savings listed. His daily expenditures and pay are also posted publicly so that no private deals are possible.

Karl Holton School is a prison for boys in Stockton, Calif. It's surrounded by a 14-foot chain link fence, the top four feet of sheer metal to frustrate agile climbers (it doesn't; the boys turn the tines of forks and grapple their way over the top). There are almost 400 juvenile criminals inside.

A couple of football fields away is another prison for boys, constructed to be almost a mirror

image of Karl Holton. It is the O. H. Close School, with about the same population. But it has an entirely different and similarly innovative philosophy of treatment.

Side by side, these \$25 million experiments are symbolic of the desperation of a society bewildered by the defection of its youth. The most distressing criminals in the United States are its juveniles—as young as 7, mostly in the mid- and upper-teens.

One in every six American citizens is a child between the ages of 10 and 17; three of every six arrests for serious crimes are of someone in that age bracket.

Crime rates among youth are alarming in every segment of the country—both boys and girls; inner city, suburban and rural; rich and poor; white and black (though, as with adults, the poor and the black, after arrest, are sent to court and prison more often than affluent law breakers).

See PRISONS, A12, Col. 1

The Failings of All Society

PRISONS, From All

Once juveniles are convicted, they do worse than adults. From 40 to 70 per cent of adult prisoners repeat crimes after their punishment; from 74 to 85 per cent of juveniles do so.

The dismal record of juvenile "corrections" is especially frustrating because it deals with presumably pliable youths still forming their characters.

An alarming number of juvenile criminals apparently want to kill themselves, either directly by drugs or engagement in suicidal violence, or by symbolic death through repeated imprisonment.

What happens to these imprisoned youths raises questions about the society that produced them. All over the country, the men and women who run juvenile institutions say similar things, typified by:

We inherit the failures of all the other institutions of our society, the failure of our homes, of our schools, of our churches, of our economy. We get the products of a culture that worships material things—money, cars, clothes—and of a culture that glorifies violence and sanctifies guns. And what can we do about the father who's an alcoholic or the mother who's a drug addict, or the uncle who's a child-beater, or the 10 to 30 per cent of girl offenders who have been the object of incest with their fathers and stepfathers? And what do you expect when our graduates go right back into that environment?

They are profound questions. But they do not relieve the institutions completely. Once juvenile "homes" receive convicted youths, a large proportion of the institutions do things for which the law would prescribe a punishment:

Lock the in terrifying isolation; beat them; put them into circumstances in which forced homosexuality is predictable; forced them into lesbian and lesbian; force them to associate with promoters of violence.

One expert in criminal justice said, "Juvenile corrections isn't better than adults, it's just more hypocritical."

There are still juvenile jails and prisons—"halls" or "homes" or "camps" or "schools" or "centers"—where the chief instruction for a new guard—"counselor" or "correctional officer" or "dorm leader"—consists of how to rough up a juvenile without leaving marks; always use forearm and whole body, never fists or feet.

Most places are still crime schools. Let me tell you a little story, an experienced worker in corrections said recently. "We were in a new, nice-looking jail in the northwest and interviewed two 14-year-old girls sitting by each other. We asked the first girl what she missed most and she said, 'Speed and men.'"

"Speed" is the street term for methedrine, a chemical stimulant that increases heartbeats and raises blood pressure and in large doses produces hallucinations and sometimes death.

"We asked the second girl what she missed most. She obviously was not interested yet in speed or men. But she



RICHARD KOLZE

...everything in the open

was a very unhappy girl and we all felt that it was almost certain that the moment the second girl got out of jail she would rush to find comfort in speed and men."

Overcrowding and Brutality

In Miami last October, the director of the Dade County Youth Hall admitted that the jail was built for 52 but now held 250 and it was necessary to put juveniles in the same room not by offense or personality but by physical size, so that each child would have a better chance of defending himself physically.

"There's just not enough room to do it any other way," Everett Cline, the director said. "Many of them are runaways, many have drug problems. I wouldn't doubt it if a few were prostitutes. There wouldn't be any way to keep them from teaching these things to one another."

In Detroit last November, lawyers brought suit against the Wayne County Youth Home on behalf of five children who were jailed only because they had been abandoned by their parents or had been taken away from parents who were brutal or alcoholics. Once in the protection of the state, these children, the suit claimed, were placed for as long as three days at a time in a bare cell with only a mattress and a toilet, punished by being forced to stand with arms outstretched and not move for hours, and struck on the head with keys.

They allegedly received these punishments for speaking without permission, not answering questions fast enough or looking out of windows without authorization.

Several weeks ago, a Harvard student pointing as a 16-year-old delin-

Past
2/13/72
-2-

Coffee Break #40
 10 min / cent
 Outside Break #15 per 5 min
 RE Center #1 per min
 Teachers Chair #20 / period
 Trip to Another Class #200
 Trip to Library for Books 50¢ / min
 Listen to Tapes 2 min
 Trip to Hall #5 per min

The price list at Karl Holton School.

quent, entered the John J. Connolly Youth Center in the middle, Macs and wrote in the Boston Globe that the place held 200 boys though built for 22, and that staff members held boys reads under water for punishment.

Two boys found talking without permission were punished by having to run between two lines formed by all the other teenage inmates. The other inmates were required to punch the offenders with a closed fist between the wrist and the shoulders. If any boy in the line failed to hit the two boys, he would then have to run the gauntlet himself.

How many juvenile centers are run like this is unknown. It is a world closed to the public and to the press. When there are visits, it is usually during hours when the inmates are in classrooms, thus centering attention on the clean hardware and concealing the extent of overcrowding.

There are many humane and purposeful juvenile institutions but they tend to be the ones most eard about because they are less secretive.

State and local programs are varied and unlike rated. The federal government, which presumably would have the most sophisticated talent and the most money, is fragmented and disorganized in its programs.

California's Two Experiments

Though 43 per cent of arrests for serious crimes are of juveniles, the chief agency for juvenile corrections research and support, the Law Enforcement Assistance Administration is spending less than 15 per cent of its budget on juvenile delinquency. Work on juvenile delinquency is scattered among a multitude of nine different federal agencies, ranging from the Department of Housing and Urban Development to the Department of Agriculture.

This is why experiments like the two centers in Stockton stand out by contrast. There is the latest attempt in a long search.

For decades, waves of new approaches have washed over millions of troubled children. It began with moralistic instruction, preaching at bad children to be good, still a popular prescription for making adults feel better. Some places concentrate solely on vocational training, though usually in an obsolete or depressed trade.

Some spend most of their time testing the child and making sophisticated analyses. Or they concentrate on academic achievement.

Others believe that what the bewildered soul of a child needs more than anything else is fresh air and competitive sports.

Psychiatry in its various forms dominates some institutions, including every conceivable application of counseling and group therapy.

None on their words. Or at least none works if the measure is that most of their graduates will thereafter avoid arrest.

Richard C. Kolze, superintendent of the Karl Holton School, does not pretend that the "Karl Holton Dollars" will buy guaranteed solution either, but his institution is permeated by a religious devotion to trying it.

The theory back of it is "Behavior Modification," a practice that accepts the fact that either we do not know why human beings do the things they do, or if we do, there isn't much we can do to change people by rearranging their thoughts and emotions. It aims at a seemingly modest goal: when ever the causes, just change actions, reward behavior you consider good, punish what you consider bad. Since it is known that punishment produces minimal learning, the emphasis is on reward for desired behavior.

From the first moment a convicted boy enters Holton School he gets a contract, a formal written agreement signed by him and his counselor, providing so many Holton Dollars for certain performances.

Past 2/3/72
 -3-

The "Get Acquainted Contract" says, "During my first week, I will: 1. Introduce myself to every staff member on my hall team; 2. Carry on a 5-minute conversation with every staff member on my hall team; 3. Following each conversation, get the signature of the staff member; 4. Learn the name of every staff member on my hall team; 5. Name (from memory) each staff member on my hall team to my assigned counselor. For this I will receive: 1. 75 points for each signature obtained; 2. 25 points for each name remembered. Some contracts are for "convenience behavior"—managing time well, relations with other inmates, getting out of bed on time, finishing meals on time. The boy must earn \$3,525 this way.

Other contracts are for academic achievement. All instruction is individual, so the boy can move as fast as he wishes, contracting only with himself. He gets 1000 Dollars for good grades, completing tests properly and other tasks related to schooling. He has to earn \$2,500 that way.

Finally, he has Critical Behavior Deficiencies to earn dollars. Each month, three staff members and the boy himself fill out a checklist of 20 items believed to be important in predicting how a person will do on parole. These include the number of contracts filed and satisfied, various measures of "positive behavior" and the integrity of the boy in doing his tasks. He must earn \$2,100 this way.

Like the Real World

The second discovered that it had created a replica of the economic world and now need a full-time economist. The recordkeeping is overwhelming. Dollars earned are computed on the spot and reports sent to a central accounting office where debts and credits are calculated and posted. They plan to get a computer.

"There are some things we have to watch out for," Kelly says. "We limit the number of 'Dead Man Contracts' that the boy earns for simply not doing something bad. Otherwise, of course, he'll do a lot of bad things so he can get credit for stopping them."

"We watch the contracts the staff writes all the time. Everything depends on the quality of the contracts. If a kid gets dollars just for keeping his shirt tucked in or for going to church, they all we have here is a funny game. But if you contract with the kid to analyze why he's angry at his mother or fights with the other boys, then it means something."

"You see, this puts everything out in the open. The staff can't play games with the kids or the kids do it with the staff. You know: 'Let's hit Mr. Jones up for a favor, he's in a good mood today.' The kid knows what's expected of him and exactly where he stands. There's no guessing, no subjectivity."

"We don't let the staff write up bad attitudes. They can't threaten anything if they have a problem with a kid it's up to them to handle it some other way."

*Post 2/13/72
-4-*

"We keep a constant analysis of dollar flow patterns. For example, if some kid is accumulating too much money and not spending it, we know that he's getting too rich and won't have to work. We look at what's selling in his hall—maybe pool is a favorite pastime or phone calls, it varies from hall to hall."

"In some halls, private rooms are the big thing. In others sleeping in. Whatever it is, when some kid in a hall is saving up too much, we raise the prices on the popular items in that hall. We cause inflation so he has to work harder."

Just like the outside world?

"Exactly."

How do you know that the kids won't learn how to manipulate the economic system?

"They aren't smart enough to do that."

Boys pay rent for private rooms—there are dormitories and private rooms in each unit—but they get dormitory beds and meals "free."

"We tried to charge for room and board but it wouldn't work because it meant inevitably that some kids wouldn't be able to pay. And obviously we weren't going to keep them from food and board, so we'd have to have a welfare system. We planned that, too. But it got so complicated it over-loaded the system. Besides, we couldn't sell the welfare system to the other kids who wanted to know why they should give up 10 per cent of their bank account."

Just like the outside world?

"Right."

The Catch Is Parole

When the Holton School inmate has earned \$7,575, he is eligible to apply for parole. But there is a catch. Despite all the daily computations, data processing and elaborate manipulation of the economy, when the big prize has been earned, it is simply eligibility for parole. The real pay-off, the parole, is run on a different system.

"We measure everything on performance of the young man," says Kolze. "But we're dealing with a parole board that is time-oriented. We feel that a lot of our boys could move out of here much sooner. But the board disagrees because they consider the original offense and the amount of time spent in the institution."

A brisk walk from the gate of Holton School is the O. H. Close School, the same kind of physical plant with roughly the same number and kind of boys. "We have everything here," Harold Richards, the superintendent says. "You name it, we've got it—burglary and auto theft are the biggest offenses, but we've got child molesters, murderers, armed robbers, rapists..."

Close School is devoted entirely to Transactional Analysis, self-examination based on the assumption that each person has within him three major approaches to life: a built-in Parent, who reacts emotionally; and a built-in Adult, who is a creature of facts and logic. These interact within the individual, causing him confusion. And each person's three ego states interact with other individuals' three ego states, causing a variety of hidden messages and games between people. (A basic book on the technique is Eric Berne's "Games People Play.")

"What we would hope for," Richards says, "would be that a kid by the time he left here would be able to plug into his own mind before he does something to evaluate the situation before he acts, to find out, as we say, what ego state he's in when he is about to do something."

Instead of the price lists of "Holton Dollars" in the institution across the street, Close School has posters poking fun at games inmates play. "Let's Make Counselor Sorry" and "Look What They've Done To Us" and "I'm Just a Typical Teenager." The staff isn't immune: "After All I've Done for You—" and "I Let You Go On a Furious and Now See What You've Done" and "Kick Me."

Games, in transactional analysis, are a series of secret messages with a gimmick designed to produce some emotional payoff. The best emotional state and the motto of the technique is, "I'm Okay, You're Okay."

A Life Script Questionnaire

When each of the 390 boys enters the school, he fills out a Life Script Questionnaire designed to give insight into the boy's conscious and subconscious expectations for himself.

"The number of kids who have a lifetime script, a violent death, or a lifetime spent behind bars of some sort is just incredible... Usually a life script is a reflection of what parental expectations were... Many parents unconsciously want their kids to fail. They unconsciously want them to take drugs, for example, even as they say, 'Don't take drugs.' The hidden message is, 'Do take drugs.'"

The staff described one boy committed for forcible rape.

"A brutal crime," Paul McCormick, a worker at the school, said. "A gang of kids grabbed a couple who were up in the hills necking and they robbed the guy and raped her."

"This boy was unaware that he had any anger in him. I finally got him to see that he had brutalized another human being, a complete stranger, so it's an evidence of some kind of hate or anger within himself and not related to that particular girl. That it's in him."

"He wasn't aware of it, but he had been programmed by his mother and father from about the age of 12, who kept saying, 'Now don't get in trouble' when they were really telling him all the time, 'You're the kind of kid who's gonna be bad, bad, bad'... What's the worst kind of bad? Rape."

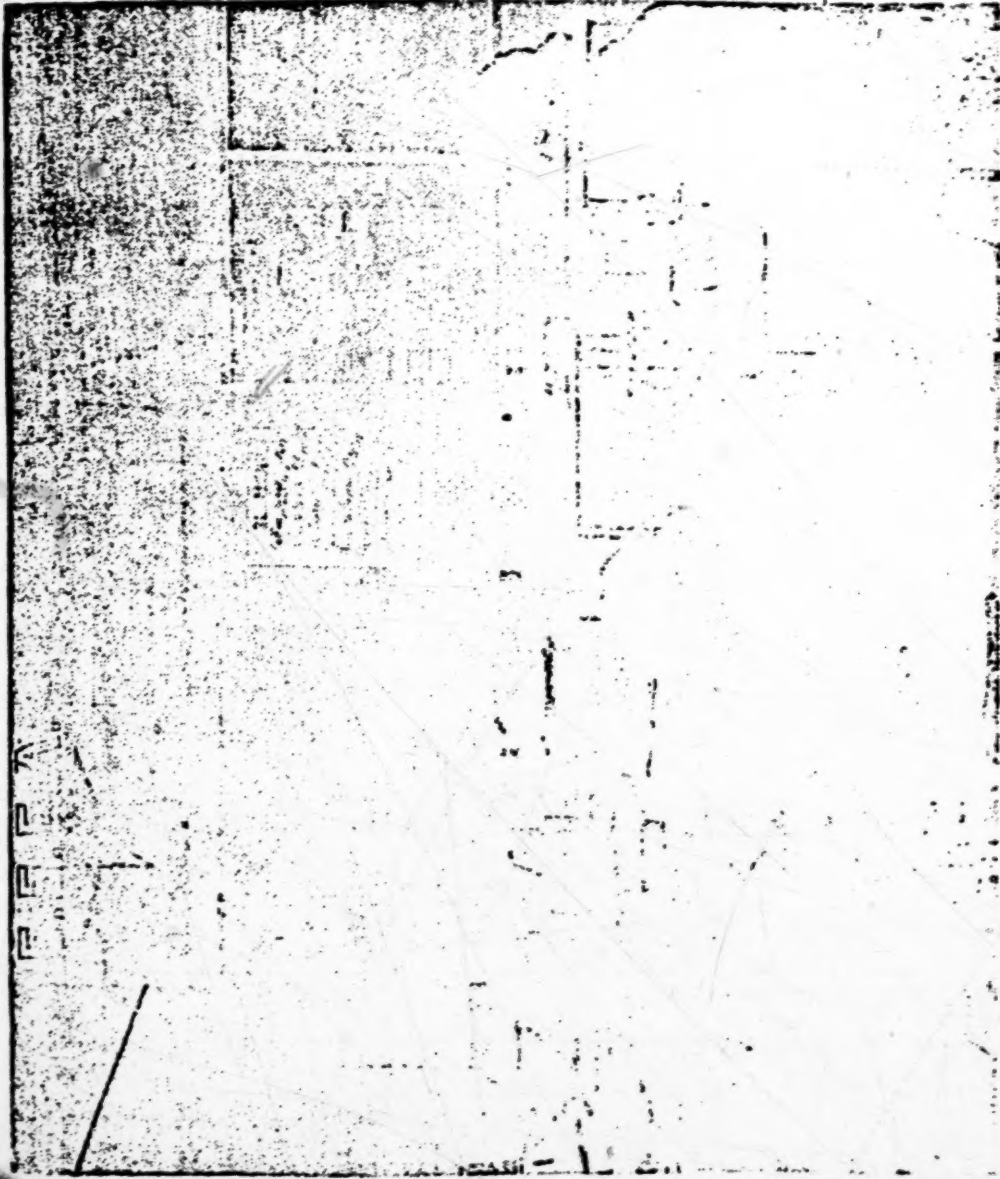
"Well, it's kind of ironic because I got busted for rape and I could have been with my girl friend that very night, and we could have been balling the way we always did."

He says that his companions kept urging the rape. He wanted to return home. But in the end he led the group. He said he didn't enjoy it.

Why do it if he didn't enjoy it?

"It didn't strike me in my mind as forcible rape, kidnap and whatever else. No, it didn't strike me as that."

"I was with my friends and I could only explain this through what I've learned here about myself. I needed strokes—my friends said things I liked. I went along with the group."



Teacher-teaching in the classroom at Karl Helton School.
By Anthony Lewis—The Washington Post

"I relied more on my friends than I did on Mom and Dad. . . . All my Mom and Dad would do would say that everything I did was wrong. They'd always be, 'You're gonna get in trouble.'"

"And I never thought much about what I would do in the future. I wanted to be out of the house. I wanted to go to parties. I wanted to have chicks. I never thought much about it. I never had any insight into myself until I came here."

He spoke softly.

"I don't have to please nobody. I don't have to make anybody love me or hate me. If I reject stealing a car that my friends want to take, it isn't that I reject my friends, but just the idea of stealing. After that, if they want to reject me, then I can say, 'F— you.' Now that's a change because before I had to go along with my friends. Same as with my Mom and Dad."

"Does it work? Does it work better than behavior modification across the street? Nobody knows. Typically of correction systems nationwide, California spent \$13 million to build the two institutions and has spent \$22 million operating them but didn't appropriate research money to measure their relative effectiveness. The federal government had to do it in a study still in progress."

Superintendent Richards was asked whether it was possible that he was merely predicting more insightful car thieves and rapists.

He shrugged.

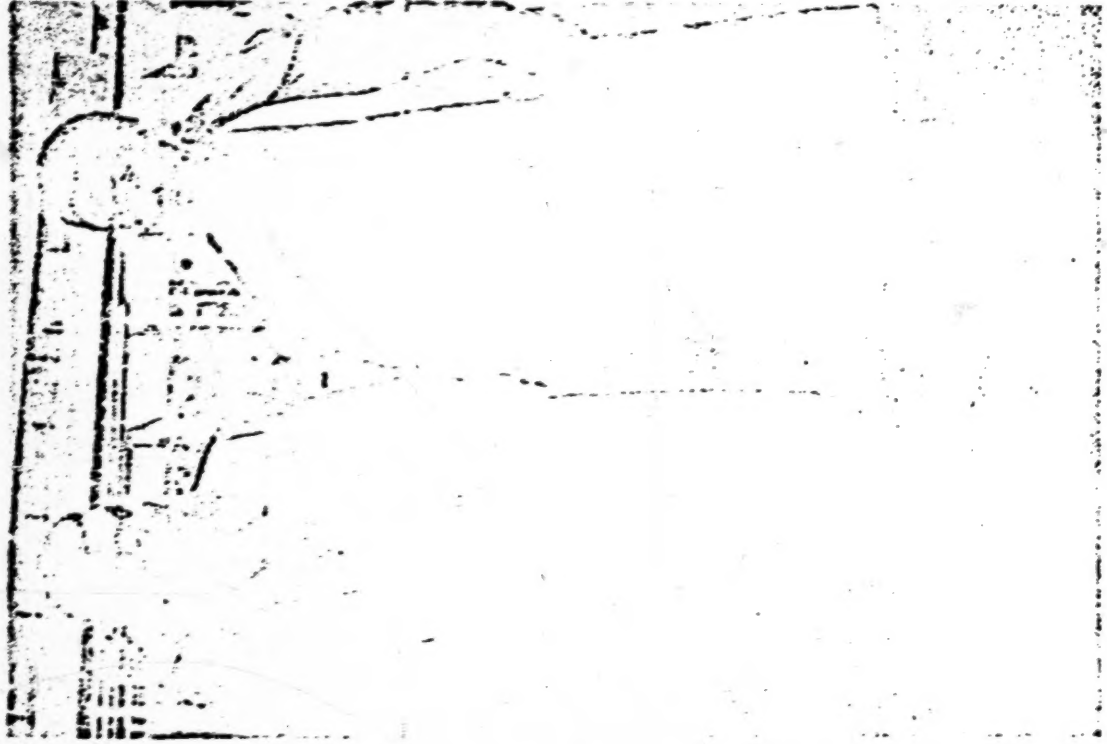
"We don't know. But I have trouble believing that we are not doing some good. I think it's justified to use the medical analogy of treatment: you don't measure it by sudden cure but by the number of relapses. I'd be surprised if our kids don't have fewer relapses. But we just don't know. We won't know for a long time."

NEXT: The District of Columbia system.

Post 2/3/72
-5-

The Shame of the Prisons

Rehabilitation: A Frayed Hope



The Lawrence Smiths—father and son—in Lorton.
By Matthew Leight—The Washington Post

Sixth in a Series

By Leon Dash

Washington Post Staff Writer

The 12-year-old boy thought he was alone in the dormitory of Cottage 7, sweeping under the beds. But he wasn't alone. A creaking wooden floorboard caused him to turn. A 14-year-old fellow inmate of the old Industrial Home School for Colored Boys (now Junior Village) was sneaking up behind him.

"He said he'd been watching me and said I was either going to fight him or let him have sex with me," Lawrence Smith Jr. recalls.

Smith retused. The bigger boy grabbed him. Smith pushed back. They fought and Smith says he won that battle.

This was one boy's introduction, 18 years ago, to the world of District of Columbia "corrections"—to sexual assault, fights and beatings behind the walls of institutions where juveniles and adults from Washington have been sent for the announced purpose of being rehabilitated.

In the years since young Smith was first locked up, the D.C. prison system has undergone drastic changes. There have been pioneering reforms that others have seen fit to duplicate.

But today Smith is back in prison. There he joined his father, who preceded him into prison. And while the Smiths' history is not necessarily typical, it tells a lot about the prison system in the District of Columbia.

The longest period the younger Smith (who calls himself Smith-bev) has spent outside of jail since the age of 12 was eight months. He is now 30.

His father, Lawrence Smith Sr., now 47, has just completed more than 12 years at Lorton for the sale of narcotics and for parole violations.

Smith Sr., who was addicted to heroin early in adult life, typifies an older generation of unskilled, undered-

See PRISONS, A14, Col. 1

Of Stopping Recycling

PRISONS, From A1

reated criminals. He talks in a dry, even monotone which lacks the rhetorical cadence and hostility to the "establishment" characteristic of many of the younger Lorton inmates.

In December, 1958, while his son was still at National Training School, Smith Sr. was released from Lorton with \$45 and what he describes as an "old cult," after serving a three-year sentence. His wife and five other children were living on welfare.

During most of his stay at Lorton, Smith Sr. had worked at a grinder in the institution's old foundry—smoothing the rough edges of sewer pipes, fire hydrants and police callboxes that were being made for the District Government. "Jack in those days," the older Smith said, "we were only making \$3.60 a month."

Upon release from Lorton, Smith Sr. recalled, there was no sense in looking for foundry work like that he had been doing for three years at Lorton. There were no foundries in Washington. It wasn't too long, he said, before he was back to using heroin and selling it to support himself and his family.

His son, Smith-boy, is representative of the younger Lorton inmates. He is the youngest of six, and he is six years over the average age of the Correctional Complex's 1,300 inmates, which is 25, but made up of a level of education is the same as Smith-boy's—eighth grade.

The younger Smith has spent most of the last 15 years of his life in various hospitals after the Industrial Home School, then Cedar Knoll in Laurel, Md., the old National Training School for Boys, three Federal prisons, the Federal drug treatment hospital in Lexington, Ky., almost four years under psychiatric care at St. Elizabeths Hospital and the Lorton Youth Center.

He finally joined his father at the Lorton Correctional Complex last summer following conviction of armed robbery, assault with a dangerous weapon, and carrying a concealed weapon. Sentenced to five to 15 years, he'll be eligible for parole when he is 35 years old.

As it happens, Smith-boy's father's sentence expired Jan. 20, following the longest single period he has seen his son since 1931. But Smith Sr. is facing a fresh indictment from 1970 of conspiracy to sell drugs while he was out on parole.

Whatever the differences between father and son, there are important similarities. With the exception of some clerical work the father has done at Lorton, both men lack marketable skills after almost two decades of jail sentences.

And both father and son ended up at Lorton.

Stories such as the Smiths' are not uncommon among Lorton's inmates. Fathers, and sons, brothers, cousins and childhood friends have all, together or separately, passed in and out of Lorton's main gate.

Although there are no statistics a large number of the 2,200 inmates at Lorton's Correctional Complex, maximum security facility and Youth Center have been recycled through the District's juvenile delinquent institutions only to end up, finally, as young adult offenders at Lorton.

The two Smiths typify the depressing cycle of crime and imprisonment, more crime and more imprisonment, that seems to characterize the graduates of District reform schools and prisons. The products of chaotic, unproductive backgrounds, they drift into crime and serve time in "correctional" institutions where their problems deepen and they get no practical skills.

The Pressures of Change

That history illustrates something else: the acute political and public-relations pressures aroused within a community when a prison system tries to change.

In the last four years, the correctional department has undergone drastic changes. They were directed, first and with apparent success, to reducing the incidence of riots, racial battles, homosexual assaults and other destructive forces inside the prisons.

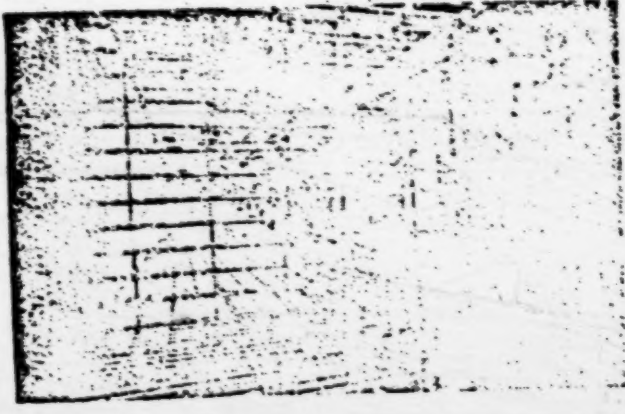
More important, the reforms have tried to alter the endemic recycling of former prisoners back into crime. This has been the major concern of the D.C. Department of Corrections since the mid-1950s.

A prison sentence can break up a home and impose a stigma to the shame and burden of welfare dependency, and it can increase the chances that the children will turn to crime. It can compound problems of alcohol and drug addiction.

The reforms have had several aims. They have been directed at gradually letting prisoners get used to freedom

they will have after they have served their sentences. Another aim has been to teach them skills that will earn them money legally. There have also been efforts to give the prisoners guidance in the personal problems that might have caused their criminal careers in the first place, and which may have been deepened by the experience of being locked up for long periods of time.

The department's innovative programs have been aided by Lorton's location near this city. Most state and federal prisons are in rural areas far from inmates' families and remote



Past 2/4/72

(2)

and qualified staffs. But of the Lorton inmates, over 80 percent of whom are black, have no family ties in Washington. They have no community ties in Washington, an important element of community-based correctional efforts.

Prison director Kenneth L. Johnson says convicts should be released from prisons gradually through pilot projects that give them a chance to adjust to life outside of prison. "Release a man gradually," Johnson said recently. "Give him a chance to re-establish himself, find a family."

Community-based programs, which send convicts back onto city streets after their sentences are completed, have drawn harsh criticism from the District Police Department and the District government, as well as private citizens.

A major issue is new crimes committed by convicts while participating in one of three community-based programs: halfway houses, weekend furloughs or "community projects" such as group visits to put on dramas.

For Halfway Houses

Opponents of the department's program are led by Deputy Mayor Graham and Police Chief Jerry V. Wilson. City lawyers now on the City Council, including Mayor Ted Mosier, point to the lack of family ties as the basis for opposition. Community programs, they argue, expose Washington's citizens to a necessary danger.

One of the major points of dispute is the halfway house, which expanded from one in



JOHN O. BOONE
... on the defensive

the fall of 1969 to 13 by June of last year. Part of a police report issued last November lists re-arrests of 34 halfway house residents and of 18 halfway house escapees between July and September.

The combined total of 52 new arrests represents fewer than 10 per cent of the 613 convicts who lived in halfway houses during the three-month period, and of the total, 43 were charged with lesser crimes. But three were charged with homicide (a major sore point with critics) and six with armed robbery.

An October corrections department report says that 51.6 per cent of the men who go through halfway houses were not arrested for new criminal ac-

Post 2/4/72

activity. The rate among inmates directly released from Lorton is 80.8 per cent.

"These figures tend to prove," said Stuart N. Adams, the corrections department's associate director for planning and research, "that our halfway house program is working."

But Blair G. Ewing, former director of the city's office of criminal justice plans and analysis, said Adams' statistics give an unclear picture of what is happening inside the halfway houses. Ewing, a consistent critic of the house, said that if there is still an incidence of 23 to 29 per cent of drug use and a 24 per cent rate of escape, then the program is not working as it should.

The central argument about halfway houses is simply not answerable now. Defenders say, in effect, that almost all convicts will be back in society one day, that halfway houses appear to reduce the incidence of repeated offenses and that, therefore, society is better served by such efforts to reintegrate the inmate into the outside world.

Critics, in effect, base their case on the simpler truth that halfway house residents couldn't commit any of these crimes if they were still in Lorton.

Until the data are sufficient to show whether the total number of repeated offenses is reduced or increased by halfway houses, the argument is likely to go on.

Other pieces of evidence are elusive, too. In the past, for example, Allen M. Avery, associate director of community services in the department of corrections, has claimed that most of the problem in halfway houses was residents who had been committed either by the courts or through the District's bail bond agency.

But a breakdown supplied on request by Avery's office showed that 43 of the 52 men rearrested after they had been sent to halfway houses had come either from the Lorton Youth Center, through the parole board or on the recommendation of counselors — and Avery's office has a voice in each of these. Only five of the 52 re-arrested men had been committed by the courts and two were bail-bond felons.

Asked why the data differed from his previous statements, Avery said that in the future a closer check would be kept on how inmates are committed.

Other Community Programs

The rapid expansion of community projects and other innovative programs began in 1969 following a disturbance at Lorton the previous year.

Two penologists identified with reintegration programs, M. Robert Montilla and John O. Boone, were brought into the corrections department with a mandate for reform.

Consistently on the defensive over the last year, both Montilla and Boone insisted their programs had real rehabilitative value that would reduce the number of such classic examples of criminal recidivism as the Smiths. But both men, angered by criticism of their programs and apprehensive about reversion to old custodial policies in which prisons simply hold people until the end of their sentences, resigned at the end of last year.

Last July, Boone was ordered to stop the furlough program. Following 21 drug overdoses and one drug overdose death at Lorton, all of the community-outreach programs were also halted on grounds that these could have been the way convicts got the drugs. Those community-outreach programs in which Lorton inmates make trips to Washington to work with District youths have since been resumed on a restricted basis.

Corrections officials had been pushing community efforts in part because of overcrowding in all of the District's prisons. The renewed overcrowding if the community programs end will lead to a breakdown in their rehabilitative efforts within Lorton, they claim.

Past 2/4/72
(4)

The Lorton complex is 21 miles south of Washington in Fairfax County, on the outskirts of Northern Virginia's suburban sprawl. It was built as the Lorton Reformatory in 1916.

D.C. System's Final Stop

The last stop in the District of Columbia system of criminal justice is the Lorton correctional complex for adult offenders.

Built as the Lorton Reformatory in 1916, the complex is located 21 miles south of Washington near Interstate 95. Just on the outskirts of northern Virginia's suburban sprawl, perched on top of a hill in undulating Fairfax County farmland, the complex's 7,000 acres are surrounded by a 25-foot high chain-link fence topped with barbed wire.

Among inmates, it is known as "The Hill." It has 25 dormitories designed to hold 1,400 prisoners.

Next to "the Hill" is a maximum security prison on 19 acres of land surrounded by a 20-foot high brick wall. Known as "the Wall," the maximum security prison has three double-lined cellblocks in which about 300 inmates spend up to 24 hours a day.

A half-mile away in a grassy 38-acre hollow is the Lorton Youth Center. It is surrounded by two chain-link fences, 15 feet apart, topped with barbed wire. There are four buildings with 324 one-man rooms. An admissions building doubles as a dormitory when the number of youths goes above 324, which happens often.

A section of the old Workhouse is now the fenceless minimum custody institution. Located a mile south of the Youth Center, minimum custody has three 100-man dormitories.

Former Lorton superintendent Boone said that idleness, a feeling of hopelessness and lack of motivation caused by "warehousing" prisoners create tensions that lead to strife among inmates.

Programs such as evaluative furloughs or Lorton's Federal City College program provide inmates with high levels of motivation, Boone said. "A man doesn't want to get a DIT (disciplinary report) and thereby lose his privileges," Boone added.

The future of the community programs is now unclear.

All community programs, Deputy Mayor Watt said in a recent interview, will remain in their present status until five-member mayoral committee, chaired by former Corporation Counsel Charles T. Duncan, completes a five-month study of corrections.

What the committee decides will affect not only future prisoners at Lorton but also the citizens of Washington whom Lorton is designed to protect.

The committee's choice is personified by the lives of Lawrence Smith and his son, Smith-ley. The father was kept behind bars as much as possible — arrested first at age 23 and in jails and prisons for 12 of the following 18 years and back in prison again until last January.

And one of his sons has been repeating the same cycle. While father and son were behind bars, the citizens of the District were protected from them; but when they emerged they repeated crimes at an accelerated rate.

The District of Columbia, like the country at large, is now deciding whether the greater threat is to keep criminals off the street as much as possible and then suffer the consequences when the offenders come back, or to have them serve shorter sentences with more time spent in teaching the offender how to live legally and peacefully, with fewer relapses.

NEXT: A new kind of prisoner

Post 2/4/72
5

The Drive for Inmates' Rights

Serenth of Eight Articles

By Ben H. Freedman
Washington Post Staff Writer

"It used to be that the favorite recreational activity of prisoners was playing baseball. Now it's filing lawsuits," says Elyse J. Younger, attorney general of California.

Is there a new kind of person behind bars in the 1970's? More interested in politics than athletics? More militant, organized and rebellious?

Younger is right about the growth of civil politics flowing out of prison cells into courthouses. For a long time the traditional jailhouse punishes on criminal cases, which contribute to the new phenomenon is civil actions suing prison officials for allegedly violating human and civil rights.

In 1963, federal courts received only 623 such petitions from prisoners, less than 2 per cent of all federal civil suits that year.

Last year there were 12,954. By now, one of every six civil suits in a federal district court is from an American prisoner claiming that his treatment in the penal institution is illegal.

Elyse Younger is wrong about this point: "No national activity." Prisoners are suing everywhere.

Judges have been just as restless. Judges all over the country, infuriated when they see conditions to which they have condemned defendants, are dropping their traditional "hands off" policy toward prisons and are taking responsibility for the nature of the punishment they order.

This is forcing the freshest air into the American prison since its invention in 1794.

Judges have called some prisons unconstitutional -- for example, Holmesburg, Pa., and the entire Ark-



ansas state system. In Florida, West Virginia, Virginia, Illinois, California and Maryland, judges have declared particular prisons unconstitutional, usually for cruel and unusual punishment or administering serious punishment without due process.

Robert N. C. Nix Jr., presiding judge in the Holmesburg, Pa., case said, "Prisons aren't supposed to be torture chambers. The separation from society is supposed to be enough."

Judge Israel Augustine of New Orleans District Court said that unless the local jails ceased being "medieval and archaic" he would resign rather than send prisoners to them.

There is reason to think that American prisons are no worse today than they used to be. Except for overcrowding, they probably are bet-

ter. But increasingly inhumane conditions are no longer being tolerated, for reasons including a change in the attitudes of prisoners and of society.

1. Nonwhites in America—blacks, Mexican-Americans, Puerto Ricans, Indians—are 12.5 per cent of the total population, but they are from 40 per cent to 50 per cent of all persons in prisons. The entire criminal justice system—police, prosecution, judges, jails and prison—is largely whitewash. Ninety-five per cent of prison guards are white. Nonwhites are rebelling against their depressed status in the outside world.

2. Many impoverished white prisoners, though unsupported by organized ethnic lobbies, are newly activated by the realization that prisons are essentially places for punishment of the poor. Though there is severe tension between black and white inmates, and though many prisons do not discourage this enmity since it helps the staff maintain control over a divided population, when it comes to protest against the institution there is usually racial unity.

3. During this period of heightened sense of injustice in the criminal justice system, penalties have become harsher, increasing bitterness behind the walls.

4. Though the vast majority of prisoners is poor, there is a new, small fraction of affluent middle-class prisoners from cases involving drugs, the draft and civil protest, and this has mobilized much of the previously uninterested middle class to examine their prisons.

5. A new cadre of prison administrators is sufficiently sophisticated in sociology, psychology and statistics to be sensitive to the self-defeat-

See PRISONS, A6, Col. 1

Aware of His Rights as Inmate

PRISONS, From A1

ing nature of most prison punishment. Many wardens agree privately, and some publicly, with the reform demands of their inmates and feel inhibited by lack of money, political pressures and an unsympathetic public.

The most noticeable new kind of prisoner in the United States is the black militant. He sometimes appears as a member of the Muslims, the disciplined and political followers of Elijah Muhammed. Their influence goes far beyond their membership, establishing codes of conduct and attitude for many non-Muslims. Because Muslims will not eat pork, for example, many non-Muslim blacks also refuse to eat it and many prisons now serve pork substitutes.

Black militants (and some others) frequently refer to themselves as "political prisoners." It is a term that sets wardens' teeth on edge. "We don't have any political prisoners here," says New Orleans's warden of Louisiana's Federal Reformatory. "Only men who broke the law." Dr. Gerald Myers, a leading African nationalist, says, "What has happened is that the inmate invents criminal activity with the idea that he is a part of political change. That way, you end up with the absurdity that killing a policeman or robbing a store is somehow a political act."

Blacks sometimes use "political prisoner" to refer to their degree of economic and social status, conditions that produce crime and therefore an inevitable part of "the system." At other times they use it to describe official harsh treatment and training of special classes of prisoners. They use it to describe their experience in air treatment within the criminal justice system, there is more than rhetoric connected with the term.

The criminal justice system screens out the affluent and makes special selection of blacks. All social classes commit substantial amounts of crime. In 1977 James Watson, in St. Clement J. Wyle has led 29 serious crimes with a minimum sentence of two years; of 1,000 released from a cross-section of New York prisoners weighted toward the more affluent, 91 per cent admitted to one or more crimes without ever being arrested. Average for all men was 13 crimes each. There are not enough African blacks alive to account for unreported and untried crime.

Austin Postfield compared criminal offenses of college students with 2,000 boys who had been sent to juvenile court; ten per cent of male and female student had committed at least one of the offenses for which the 2,000 other boys had been sent to court.

So of 1,000 crimes committed in the United States, only 20 are ever reported to the police; this is 20 per cent of the total. The rest are unreported, often at the point of arrest, when is the last point of special selection of blacks.

Entry into the criminal justice system usually depends on the decision of a policeman. It first depends importantly on where a policeman is.

Poor black neighborhoods are high crime areas, at least in reported crime, so they tend to be watched more closely. The closer they are watched the higher percentage of persons will be arrested.

Entry into the justice system can depend on the discretion of the policeman: Whether to make an arrest, and if so, on what charge, or to let the person go as innocent or with too weak evidence to prosecute. It is an important decision for the citizen because once he is perceived as potentially criminal by the authorities and once he has been picked up or booked, thereafter the odds go up that he will continue to be considered crime-prone.

It then becomes significant that surveys of urban policemen show overwhelming prejudice against blacks, 72 per cent according to a survey by the President's Crime Commission. Even where there is no conscious bias, there may be unconscious bias, an example of "the self-fulfilling" self-fulfilling prophecy of guilt: Since blacks are so obvious within the criminal justice system and because they are distinctive by their color, law enforcement officials with no personal racial bias may believe that blurring is relative to a higher probability of criminal activity. The result is that blacks enter the first crucial step toward guilt in disproportionate numbers.

A study of 10,600 Philadelphia males between the ages of 10 and 17 showed that 60 per cent of all whites had been taken into custody at some point, but more than half of all blacks.

Dr. Nathan Glazer found that of all children picked up by police, 400 as many black children as white had afterward been charged with a crime and sent to court.



Angela Davis and George Jackson: Their pictures decorate the walls of most black prisoners' cells.

Past 2/5/72

2

on probation may do so with the finding of "guilty" on his record if he thinks the person is a good prospect for probation success because is a first offender or for other similar reasons, he can send him on probation with no guilt finding on his record. Three social scientists analyzed 2,418 such decisions by Florida judges and found that when cases had similar backgrounds, from 40 per cent to 80 per cent more blacks were sent out with the "guilty" label than whites.

So where the system selects citizens for surveillance, for picking up by the police, for booking on charge and taking to trial, it selects a disproportionate number of blacks.

Of the original 1,000 crimes committed, 14 result in court appearances and 9 are found guilty. Practically all studies show that when persons are tried on the same charges, blacks more often than whites are found guilty. A study in Stamford, Conn., for example, found that guilty findings per 100,000 ethnic inhabitants was eight times higher for black defendants than white.

Of nine Americans found guilty in a court, fewer than four actually serve time in a prison. Here, too, whites more often get probation or suspended sentences. In the Stanford study, the rate of commitment to prison per capita for each racial group was ten times more for guilty blacks than for guilty whites.

Once in prison, blacks stay there longer, partly because they get longer sentences and partly because they get from 10 per cent to 14 per cent fewer paroles. On burglary charges in Los Angeles, the longer sentences went to blacks; sentences of four months or less, 45 per cent white, 27 per cent black; sentences of 4 to 9 months, 42 per cent whites, 47 per cent blacks; 10 to 20 months, 13 per cent whites, 27 per cent blacks. A similar time served for all white prisoners in the United States is 20 months; for blacks, it is 23.5 months.

Death sentences and executions are most plainly biased against blacks. Between 1930 and 1959, when blacks were about 10 per cent of the total population, 3,957 persons were legally killed in the United States; 53.5 per cent of them were black.

This was not because only blacks committed capital crimes. Between 1940 and 1961 in Florida, 265 men were found guilty of rape. Of the 133 white men, less than 5 per cent received the death penalty. Of the 132 black men, 35 per cent received the death penalty.

Similar bias against color appears in statistics for Mexican-Americans, Puerto Ricans and other non-whites. In addition, Spanish-speaking people suffer serious communication problems because most prisons still censor all prisoner mail and will permit only English-language letters.

The reasons for inequity of the criminal justice system toward particular society of growing complexity there are more laws against certain acts than ever before; about one-third of what we call crimes today were not called crimes in 1900. This complication of laws is selectively enforced. Lack of money is clearly a major factor—poorly dressed people often "look" as "criminal" and when picked up by lawyers to defend them vigorously at every stage, including the cru-

Lack of money for bail while awaiting trial is a serious detriment to equal justice. A man in jail cannot prepare as sound a defense as a man out of jail. A study of New York prisoners by the New York City Rand Institute showed that for those of comparable cases men out on bail before a trial are less often found guilty. The poor lack good legal help for appeals and applications for parole and this affects their treatment while in prison. Prisons are more careful with prisoners who have outside connections.

Inevitably, rebels against prison find a quick response among prisoners and always will. But this has special meaning now when so many blacks are conscious of the nature of their unfair treatment. George Jackson, one of the "Solead Brothers" recently killed in a shooting in San Quentin prison, and Angela Davis, a Communist professor charged with complicity in a fatal shootout in a California courtroom both black, are the two photographs most often found in cells of black prisoners in prisons where individual decoration of cells is permitted.

The issue of prisons has become a public one from a non-racial source—the introduction of middle-class convicts. A decade ago a high-income inmate was an exotic, a rare murderer or an unlikely embezzler.

But because of drugs and civil protest, the middle classes of America are now getting an authoritative view of the inside of prisons.

During civil rights demonstrations of the 1960s hundreds of college-educated white Americans found themselves herded into southern city and county jails and occasionally into a state prison. When protests against the war in Vietnam occurred in the North, it spread this knowledge from Southern jails to Northern jails. The resulting shock of discovery contributed to the examination of all prisons now current in the country.

The expansion of drug use into middle-class America also sent more affluent citizens behind bars. An estimated 12 million persons use marijuana and in some places the penalties are severe. Even when there is no prison sentence, the intensive law-enforcement searching for marijuana, especially routine stop-and-frisk routines of police, have helped make a large proportion of American youth anti-police and anti-criminal justice. It contributed to the conclusion of much of the middle class that jails and prisons were not just places for others.

Added to this are draft cases—even- sion of Selective Service—or conscientious objection—which has sent 2,600 young men into prison in the last five years, most of them affluent and from college-background families earnest about social causes.

When confronted with political protest conditions, cruelty and sardonic hazing, they are not so likely as a ghetto veteran to accept it as the inevitable harshness of a harsh world. The middle-class prisoner often is skilled in the arts of communication, has affluent parents and has access to influential lawyers and friends. Consequently, prison brutality and unfairness has been recorded and transmitted to the outside world as never before.

Some of the middle-class prisoners are committed to varying degrees of social reform or revolution, and have been willing while still incarcerated to dramatize prison conditions with strikes, fasts and passive resistance. Peace inside a prison is fragile, relations between staff and inmates always tenuous, and disturbances in any prison create shock waves in all others. So even prisoner protests for short of riots have caused correction administrators to examine their operations.

Wardens generally dismiss the influence of the protesting inmate. "They have very little influence with the regular inmates," Nonh Alldredge, warden of Lewisburg Federal Penitentiary, said recently. But in Allenwood, an as-isolated minimum security colony of Lewisburg, when one prisoner serving time for burning draft records in Cantonville, Md., was being transferred to maximum security, about 115 inmates, half the population of the camp, stood in silent protest in the yard. "That was an exception," Warden Alldredge said. At Alderson, W. Va., Federal Reformatory for Women, Warden Virginia McLaughlin similarly dismissed the impact of "political prisoners". She said, "The other women pay no attention to them." But after Attica, such prisoners led a sympathy strike of about 130 minutes, with enough large-scale involvement to require importing of guards from other prisons.

On the other hand, the political fervor of prisoners can be exaggerated. Frank Callahan, 21, a former broadcast journalist, served a year in Lewisburg for destroying draft records in Rochester, N.Y. He described his imprisonment with inmates in for conventional crimes:

"You know, we would start talking about the war and it seemed so artificial and distant from the situation at hand. . . . After awhile I just stopped dealing with that. It was a thousand years away to talk about Vietnam. If a guy was a bank robber, he'd tell us about the jobs he had done, or we'd talk about the movies we'd seen. You know, just fairly average conversations. When things got political, they were political in the sense that here we are getting screwed. . . ."

Groups tended to stick to their own but, Callahan says, they banded together if inmate interests within the prison conflicted with policies of the prison administration, on pragmatic treatment rather than ideological commitment.

In dozens of prisons across the country, inmates have formed unions, councils and associations to obtain personal protection against violation of "rights." It has raised the question of what rights a prisoner has, if any.

The answer is murky. American law for convicts has evolved mainly from feudal England and some of it is applied today in apparent contradiction to reason, logic and the U.S. Constitution.

Post 2/5/72 43
3

Civil death, for example, was spoiled in feudal society. Lower-class convicts were killed or mutilated. An upper-class person might escape death by permanent banishment to a distant place or by becoming a monk. In either case, he was no longer a part of the feudal community, he was declared "civilly dead" and his property was distributed to his heirs as though he were physically dead. Since he could never return, "civil death" was total.

To this day, American convicts suffer some of the same feudal punishments: Thirteen states have "civil death" statutes.

In 17 states "civil death" is imposed if a man gets a life sentence. His property is redistributed, his marriage is dissolved and his children become subject for adoption, even though most life sentences end in parole.

A "civilly dead" prisoner is nevertheless still obligated to support his wife and children.

In most states, imprisonment is automatic grounds for divorce, though most prisoners are in for less than two years.

The best-known loss of rights is the right to vote. This loss probably had its origins in the Greek statute for persons convicted of "infamy." In three-quarters of the states, felons lose the right to vote by statute and in most of the remainder by administrative policy of local boards of election. It is defended as protecting the honesty of the ballot box from disreputable persons and as denying influence over laws and lawmakers to those who have set themselves against the law. It is criticized as adding no protection to the society and inhibiting the integration of the ex-prisoner into normal life.

Prisoners lose other rights and opportunities by law, varying from state to state. Some private and much public employment is denied them. Prisoners cannot sue others but others can sue them.

Three states (North Dakota, Virginia, Washington) prohibit marriages of offenders with three felony convictions to a woman under the age of 45 (presumably to prevent birth of children with the felon's "corrupted blood"). Seven states authorize sterilization of "habitual criminals." In at least three states, the law provides for complete or partial forfeiture of a convict's property.

All of these originate with another feudal English concept, that of "corruption of blood." Article III, Section 3 of the United States Constitution specifically forbids forfeiture and corruption of blood except during the lifetime of a person convicted of treason.

Most "prisoner's rights" moves are directed to his treatment inside prison. The assumption is that there are some punishments so cruel as to be prohibited in any case—like driving a man insane—and that others are so severe that they constitute a serious punishment that ought to be imposed only with due process to prevent its being done unjustly and without independent review.

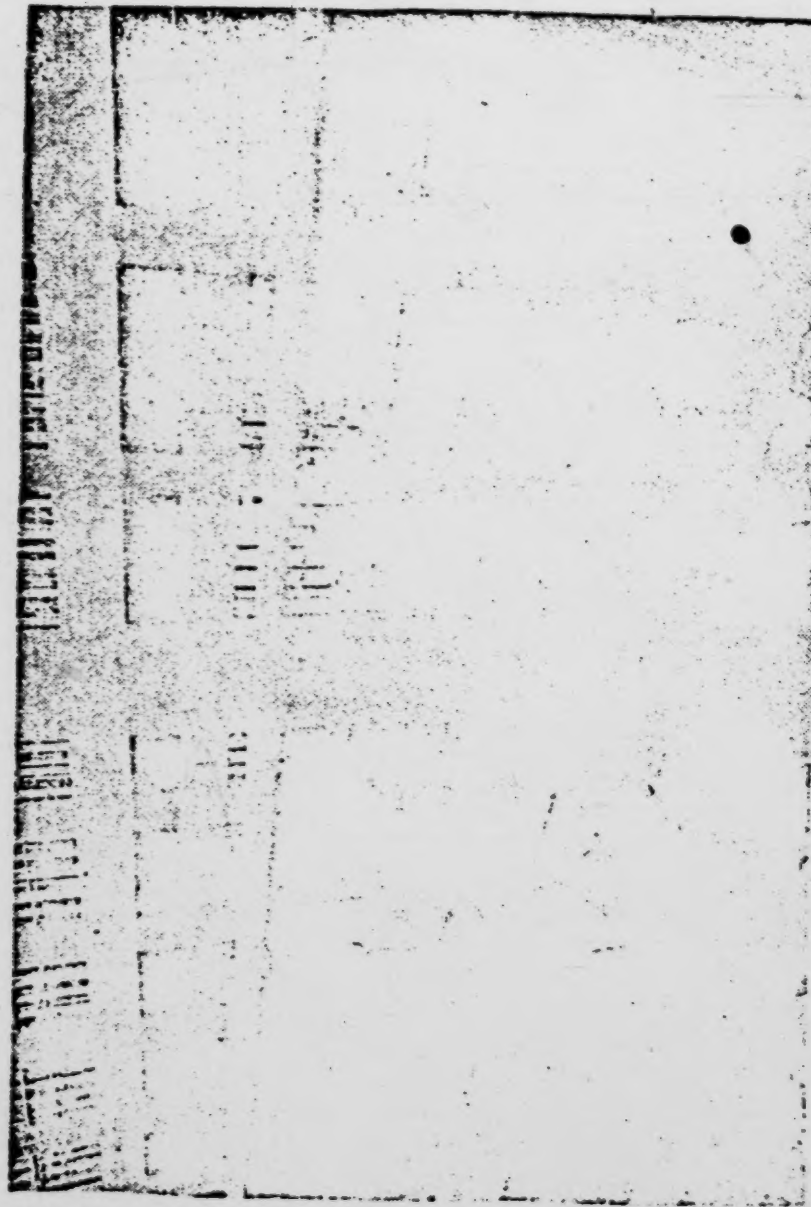
The movement toward "prisoner's rights" represents hope on the part of inmates, since these rights focus on the need for a prisoner to accept relations with society. But they also represent explosive tensions. All institutions in society are being re-examined for their goals and the ineffectiveness in attaining those goals. Failures are no longer as quietly accepted as in the past. The prisoner who universally hears he is being "rehabilitated" no longer passively accepts cruel and capricious treatment. Ninety-seven percent of prison inmates return to society, and each prisoner emerges, gauging his future relations with society.

A very unpolitical young man, emerging from five years in a state prison, said:

"All the time I was in, I remembered what they called out at my trial: 'The People versus . . . ' and then my name: 'The people against me. I'm not sure whether they're still against me.'"

Next: Alternatives to prison?

Part 2/5/72
4



New York's Tombs and the new type of prisoner: Through the courts and protest, inmates assert their rights.
By Ellsworth Davis—The Washington Post

Past 2/5/72

5

For the last four months, Sen H. Duggles has studied prisons and jails in America and Leon Bosch has exhibited the corrected system of the District of Columbia. Today, Duggles concludes with a personal assessment of possible remedies.

An Agenda for Reform Of a Hell Behind Walls

By Ben H. Duggles

Washington Post Staff Writer

When you turned down Fourth Street you saw all the usual clues: the 14-foot cyclone fence with escapeproof top, the blind window frames looking normal but previously too small for the purpose of the human head, the high intensely lit area around the perimeter.

But something was wrong. The gate was wide open and nobody was guarding it.

Inside it was eerie. Everything was in place. The plastic chairs were set around tables in the dining hall. The electric clocks were working but they were on daylight saving time, in the winter. In the Catholic chapel, the Virgin Mary was still wrapped in cellophane and on the Protestant side there were candles on the candleabra. Nobody was there.

The "new," five-year-old prison had never been used. The DeWitt Nelson Training Center eight miles from Stockton, Calif., was finished in 1967 for \$5,222,000, completely furnished for \$3,000,000 and in 1968 was on the verge of accepting the first of 400 juvenile inmates when suddenly everything

South Carolina's maximum security center: It may be the worst in America.

A lot else stopped, too. Through the fence you can see 800 acres of farmland, remarkable to the naked eye only for the magnificent oaks that stand against the sky. Unseen, below the surface, is a complex of water mains, sewers, gas lines and steam pipes already in place for connection to nine more prisons just like DeWitt.

never built.

California made a shocking decision. Like the rest of the country its crime rate was rising—fast, in fact, than the national rate. Like the rest of the country, it was sentencing more people to prison, only for longer terms, up 50 per cent in ten years. It decided to try something else: keep more criminals free in their own communities with special help.

In the last five years, the equivalent of 15,000 California criminals who ordinarily would have spent time in prison walked freely in their home towns. Instead of spending \$6,500 a year to maintain each prisoner in an institution, the state spent \$4,000 to help him keep out of trouble at home. The state

See PRISONS, A16, Col. 1

Imprisonment: Loss of Liberty or Mental Torture?

PRISONS, From A1

saved \$195 million in new prison construction and its crime rate went up at no more than other U-bar states. The policy was promulgated by a governor, Ronald Reagan, not known for penitentiaries toward crime.

The men who run prisons seem to agree that most of their inmates shouldn't be there. In visiting prisons, I asked every warden, deputy warden and director of corrections what percentage of his prisoners he felt needed to be locked behind walls. The highest estimate was 33 per cent, the lowest 5; most were between 10 and 20 per cent.

Deterrence or Deterioration

Most also believed that American sentences are too long, that after a time deterrence is replaced by deterioration.

American society already turns loose most of its convicted criminals. About two-thirds of people found guilty of crime are out on probation or parole. Probationers repeat crime at an apparent rate of about 27 per cent, compared to 45 to 70 per cent for people who spend time in prison.

This does not mean that no one ought to be retrained. Criminals dangerous to society will be imprisoned and have been in the most idyllic societies. But the country has to decide what it wants to happen inside the walls. Is the act of imprisonment itself the punishment? Or is punishment what happens after the criminal arrives inside the walls?

The way most jails and prisons are run, the walls are used to provide security while varying degrees of deliberate damage are done to inmates.

Men are put in a harsh environment and subjected to uncertain anguish, psychologically and physically. They are further punished by placement in "the hole," a standard part of every prison in which the prisoner is isolated without normal social contacts or tastes and is denied reading material or anything to occupy his mind and senses in a normal way. Psychologists say it can induce insanity.

Most prisons normally keep the prisoner as cut off as possible from his family and normal contacts. It is typical that outgoing mail is limited in quantity—sometimes ten letters a month—and is censored. It can be written only to persons approved by the prison. Incoming letters are limited to persons approved by the prison and these, too, are censored. Visiting is limited, typically to four hours a month. Often contact with visitors is limited to speaking by microphone through a wire mesh. Food is sparse and bad, treatment by guards frequently brutal and insulting. Overcrowded inmates prey on each other and the most ruthless establish the standard of conduct. Day after day is spent either in idleness or in dreary work at pennies an hour.

Pattern Itself Repels

In riot after riot, the same pattern emerges: months or years of warden's requests, without results, for improved conditions in food, program, crowding and character of guards; followed by powerful petitions of prisoners, with no result; followed by a riot; followed by punishments, followed by minuscule results.

When he was in Sweden, David A. Ward, chairman of the department of Criminal Justice Studies at the University of Minnesota, took the list of 23 demands made by prisoners in Attica with him to meetings of the inmate councils and to Swedish prison authorities.

"I really felt ashamed," he says. "The prisoners and their keepers were astonished. There was only one Attica demand—full pay for work—that was not established practice there. They kept asking me, 'You mean that in America you still have to negotiate for adequate food inside prisons?'"

The courts are sentencing more criminals and decisions have to be made for their disposition. If no new facilities are built and more inmates are put into present prisons, densities will go even higher and there will be more human wreckage and riots: the formula for a bomb is to build an escape-proof container and increase the pressure inside.

If present prisons are modernized, it will cost from \$15 billion to \$18 billion. New prisons will cost about \$25,000 per inmate capacity just for construction, and from \$3,000 to \$10,000 a year to maintain each prisoner. Society, already building at the expense of building schools, is not likely to spend such money.

It is not the noblest of reasons, but prison reform could come because it costs too much to do anything else.

Re-examining "Victimless Crimes"

The first reform should be to keep out of prison persons whose problem is chiefly medical or psychiatric. A place with custom-built locks and steel bars and untrained staff is not the place to treat drug addiction, for example.

The law and social standards need to be re-examined for "victimless crimes," illegal acts by which the offender affects only himself—drugs, alcoholism, prostitution, gambling. While the country is overwhelmed with crimes against innocent persons, it spends billions of dollars and millions of man-hours pursuing people who only do things only to themselves.

Where there are victims to crime, society should compensate them. This would not reduce crime but would diminish its social cost.

It is irrational for a society concerned with crime not to compensate its innocent victims. Nothing can pay for a murder or rape (though the police and hospitals should stop treating the victims of rape as though they were the criminals), but at least medical and psychiatric costs could be compensated. Property crimes are clearly payable.

The money involved is not a large amount, except to the victims. The average burglary loss is 150, which averages \$6 per taxpayer a year; the average taxpayer already spends \$17.20 a year to prosecute and jail burglary cases. In California the loss to owners is \$7 million a year in car thefts, though the state

Post 2/6/72
2

For offenders who need to be locked up, prisons need to change.

• Prisons should be small, the smaller the better. Large populations require regimentation and impersonal management and cause perpetual crises in control. The federal government recommends adult prisons with no more than 400 inmates, though it supports construction of larger ones. Some think 400 is too large.

• Prisons should be in cities. Prisoner families are usually poor and cannot afford long trips by private transportation to remote locations where commercial lodging is required. Prison staffs need professionals, who are not found in rural areas and don't like to move there. Inmate programs for advanced education and practical occupational training require visits outside the wall, but outside the walls of rural prisons there are usually farms and villages.

• The deliberated internal isolation of prisoners should end. Mail should be unlimited and uncensored except for inspection for physical contraband. Visiting should be unlimited except for common-sense rules. Sexual deprivation should end wherever possible. Conjugal visits inside the prison are better than nothing but they are declining and force the prison to decide who may come to visit an inmate. Regular brief interviews for all nonviolent inmates would end sexual deprivation and most treated homosexual inmates, and they would have other important benefits. Where all these things have been tried there has been a net gain for everyone, prisoner and keeper.

that may have sent them to prison in the first place. They need contacts while in prison to keep in touch with families and employers, to provide reading material and crucial information. Maintenance of these contacts make the critical weeks after discharge less dangerous. Jobs need to be lined up, housing arranged, family ties reshaped. There are not enough professional workers to do this and if there were there is not enough money to pay them. Volunteers on a massive scale are needed, including ex-inmates. (In Sweden parole officers are all volunteers, many of them lawyers, doctors and teachers.) In New York City, some churches have adopted cell blocks of the city jail. In many prisons, the Junior Chamber of Commerce has opened chapters inside the walls. Prisoners desperately need volunteer lawyers.

• Within the walls, prisoners need basic rights that no prison administration can violate. Physical and psychological torture should end. Other punishments—removal of privileges, transfer to other cell blocks, cancellation of furloughs, transfer to another prison, serious downgrading of assigned work—should be done only with a hearing by committees that include elected inmate representatives.

• The perversion of indeterminate sentences and parole should end. Short, fixed sentences with time off for good behavior would be better than the unfair accolades imposed by uncertain sentence decided by anonymous administrators. A judge may sentence a man to 12 years but an unaccountable guard or parole examiner

can serve life for stealing \$100 because they despise their jailers. Parole should end, and with it parole boards. Or else parole board decisions should be based on open, reviewable procedures with precise reasons given for denials. Since parole boards control more of a prisoner's life than any judge, they should be as accountable as judges and as subject to review and appeal.

• The elaborate procedures of "treatment" have been ineffective and have dubious ethical grounds. The modern philosophy is that the criminal is "sick" and can be "cured" by rearranging his thinking and emotions. Genuine change of attitude comes voluntarily from within and there is nothing voluntary in imprisonment; prisoners do what they can to be paroled and avoid further punishment but it usually produces cynicism. "Treatment" has not reduced repeated crime. "Treated" prisoners repeat crime just as often as "untreated" ones. Self-examination or counseling can produce benefits to inmates. But they don't reduce crime by themselves and they create an elaborate game of fake conformity. One group that does avoid future crime more successfully are the "alienated," that is, those who do not do well in "treatment." What is needed more than anything else is practical, convincing job training and effective education.

• Artificial barriers for ex-convicts and paroles should be removed. Paroles must get permission to marry and change apartments; they cannot get driver's licenses without permission or associate with people of poor repute. "My God," one parole worker said,

"the parents of half of my clients have prison records—and they're not supposed to associate with them." Many parolees come from neighborhoods where it is difficult to avoid people with police records.

Job barriers for ex-convicts are destructive and governments themselves are most guilty. Large categories of federal, state and local jobs are denied anyone with a criminal record, yet federal, state and local governments urge private industry to "hire the ex-convict."

Most licensed jobs are denied ex-convicts. New York State trains barbers in its prisons; New York State will not license an ex-convict to be a barber. In Michigan an ex-convict cannot be an ambulance attendant; in Illinois if you've been in prison you can't sell horsemeat. Ex-convicts usually cannot get auto and life insurance at normal rates.

The parolee and ex-convict are placed back into society and asked to compete with everyone else but they enter competition under heavier restraints than those who have not been to prison.

One result is that parolees and ex-convicts generally end up with the least attractive jobs with little future, making it easier to return to crime.

• No prisoner should leave an institution directly to out-ride life without a period of relative freedom and preparation for coping with the real world. In South Carolina, all prisoners in their last 90 days are in an unlocked classroom facility where they are given courses in such practical problems as buying used cars, finding housing and filling out job applications.

There should be a multiplicity of halfway houses, small facilities inside cities where prisoners live in open conditions doing work or attending school in a free atmosphere, with help available if it is needed.

• The secrecy within prisons should end. Sophisticated men like to repeat that power corrupts and absolute power corrupts absolutely. There are few places in the world where anyone has absolute and complete power over another human being. Prison is one such place.

It is an awesome power, with the ability to produce physical pain, mental disorientation and protracted agony. Yet it is done almost entirely in secret, without accountability or inspection.

Part 2/6/72

3

Donahip almost inevitably leads to pressure and counter-pressure.

The Threat of Torture

Americans don't like to face it, but physical torture goes on in this country's prisons and there is little done about it. Court suits have produced some change, but there are occasional glimpses behind the wall. When the examination ends the tendency is to return to sadism and savagery.

A year ago, a federal judge ruled that Arkansas' state penitentiary, the scene of years of tortures, was "unconstitutional" and he ordered sadistic treatment stopped. Last November, the judge held a hearing to see what had happened. Still going on, according to inmates testifying under oath, was placing of naked prisoners into unheated punishment cells; beating of handcuffed prisoners; putting a prisoner naked in a bare, concrete cell for 28 days without bed, blanket, or toilet paper; placing of an inmate in his cell by drunken guards; placing an inmate on the hood of a pickup truck that went 60 miles an hour over the fields; stripping prisoners naked and forcing them to lean against a wall with their noses for six hours at a time.

Not all prisons match such torture but without supervision and openness, all have the potential of degenerating into it.

The answer is not rules and regulations or even court orders alone. Openness to inspection by the public and by the press is the best guarantee. Visiting committees of a mixture of citizens who can examine an institution without warning society by the rule of every prison and jail jurisdiction in the country.

At present, prisoners in most places are forbidden to make contacts with the press, or pre-s with prisoners. Prisoners are often told that they will be held responsible if a newspaper is threatened with a return to prison for anything appearing in the press about them or their prison.

The Old, Easy Answers

Prisons do not stop crime. They only punish it.

Unless the sources of crime are stopped, all the prisons imaginable will not protect the public from new and repeating criminals. The easy answers for the cause of crime have been available for years: too much "permissiveness," not enough church-going, not enough hard punishment.

"Permissiveness" usually means that people have the money to move around and do what they wish and this has been more true of the middle classes who usually don't go to jail than of the poor who do. Slum families tend to be more authoritarian -- hard rules with corporal punishment -- than middle-class families.

And in the last five years punishment have become more harsh and the crime rate increased faster than ever. Nor did hard punishment work in the past when unconnected with social change at the source. During the reign of the original Queen Elizabeth, vagrants were hanged in lots of 300 and 400 but vagrancy did not cease. Henry VIII hanged 72,000 persons but it did not bring civil peace.

The Threat to Society

The less easy answer to the causes of crime may lie in the slum neighborhoods that most prisoners come from and from the phenomenal growth in use of drugs by the young. The poor are generally families caught in a radical change from uneducated rural life to technological urban demands, in a society that puts a high value on aggressiveness, possession of material goods, guns and other violence.

It is an incredibly rich society that nevertheless tolerates endemic poverty and racial depression and does it within sight of wealth. The poor usually live in chaotic neighborhoods with ineffective schools and poor career choices. The connection between poverty and antisocial behavior is historically clear and is pertinent today.

The withdrawal into drugs should warn about the lack of purpose that suffuses a society surfeited with material goods.

No Simple Answer

There is no simple answer to crime.

Under the best of conditions there will be some individuals dangerous to others who will be restrained. The first requirement of their institutionalization is that it ought to be humane and that their aggression not worsened. The two are related. Today prisoners receive troubled men, women and juveniles and deliver them back to society more unsuited to normal life and more savage than before.

But personality traits are not unconnected to the world the individual grows in. David Hazen, chief judge of the United States Court of Appeals in the District of Columbia, has said:

"Instead of faring up to the true dimensions of the problem and admitting that violent crime is an inevitable byproduct of our society's social and economic structure, we prefer to blame the problem on a criminal class. . . . They may simply be reaping to an environment that has impoverished them, humiliated them and embittered them."

Thomas Callinan, head of the New York State association of probation and parole officers, has spent his life trying to rehabilitate criminals:

"You know where it all comes from -- the slums. They come from a sick environment. We pour money into the police and the courts and prisons but we don't put it into what causes it all in the first place--poverty and race."

Before they are tried they are guilty, he says it succeeds well but we lose the problem of drugs and other destructiveness is solved, catastrophe lies ahead:

"All the storekeepers will have iron gates, all the homes and apartments will have bars on windows and doors. Then the addicts will turn to acetelene torches and machine guns. And we'll lose the city."

Prison does not change this. Men come out with the same problems that sent them in. They need individualized education up to standards that let them compete in a technical society. They need modern training in modern jobs with a future at good pay. They need to live in decent housing in civilized neighborhoods at moderate cost. They need effective community services, volunteer and professional, for the personal and family crises that periodically overtake most people.

But this is a dilemma. Why do more for lawbreakers than for the ordinary citizen who needs the same things? The answer may be to provide it first for the ordinary citizen who needs such services and it is possible that in the future there will be fewer lawbreakers.

So far, society has not stopped the rise in crime despite added billions of dollars for more police and more punishment. The failure threatens a free society. Citizens in their homes and on the streets are justifiably frightened by threats to themselves and their property. Yet violence, including the adoration of guns, continues. The barring of people in their homes and abandonment of public places goes on. It is an escalating war between the comfortable who want peace and the uncomfortable who don't.

If the only answer is to imprison the growing number of captives in this warfare, it could result in a society forced to be more concerned with physical security than with freedom, a nation of jailed and jailers where in the most prevented sense each person will be his brother's keeper.

Post 2/6/72
4

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE WASHINGTON POST CO.

and

BEN H. BAGDIKIAN,

Plaintiffs

v.

RICHARD G. KLEINDIENST, Acting
Attorney General of the United States

and

NORMAN A. CARLSON, Director,
United States Bureau of Prisons,

Defendants.

Civil Action No.

District of Columbia) ss:

AFFIDAVIT

I, Ben H. Bagdikian, first being duly sworn, depose
and state as follows:

1. I am a plaintiff herein and am presently employed
as a reporter and an Assistant Managing Editor for The Washington
Post, a newspaper published in Washington, D.C. with extensive
circulation in the Washington Metropolitan Area, and to some
extent throughout the United States. I have been a newspaper
reporter for approximately 18 years. As a reporter I have covered
combat during wartime, domestic riots, and foreign revolutions.
2. In my capacity as a reporter for The Washington
Post, I have written a series of articles on prisons which were
published in that newspaper, along with various other articles
relating to prisons or prison life which have appeared in The
Washington Post.

3. During the course of the last two weeks I have received numerous letters from inmates at the U.S. Penitentiary at Lewisburg, Pennsylvania and other federal penal institutions.

I have also received telephone calls from attorneys and other individuals who have visited prisoners at Lewisburg during the last two weeks. These letters and telephone calls have contained reports that work stoppages by prisoners have been in progress at these institutions since February 14 or 15, 1972; that prisoners have, in connection with these work stoppages, confronted prison officials with grievances about prison conditions and about the procedures of the United States Board of Parole; that prison officials are engaging in reprisals against prisoners and prisoner representatives who are attempting to submit grievances to the prison officials contrary to an agreement by prison officials not to engage in such reprisals; and that public statements by prison officials concerning these events have been inaccurate or untrue.

4. On the basis of these numerous letters and conversations, I concluded that newsworthy events are currently transpiring at Lewisburg, Danbury, and other federal institutions which are of serious public concern. However, because of the sketchiness of the information presently available to me and because of what may be conflicts between the reports I have received as to precisely what has been happening, I determined that I could not responsibly write a story purporting to describe these events in detail without going to the prisons personally and interviewing knowledgeable participants on both sides. Accordingly, on March 1, 1972 I placed a telephone call to the Federal Bureau of Prisons and orally requested from Defendant Carlson permission to interview inmates at Lewisburg and Danbury. Mr. Carlson

LAW OFFICES
WILLIAMS, CONNOLLY
& CALIFANO

1600 HILL BUILDING
WASHINGTON, D. C. 20004

AREA CODE 202
692-6669

denied the request, stating that it was against the Bureau's regulations to permit reporters to interview inmates. I renewed my request in writing on March 2, 1972 and, Mr. Carlson in writing, again denied my request, stating that: "... the Bureau of Prisons' policy does not permit press interviews of inmates." (Exhibit D to the Complaint).

5. Since the time Mr. Carlson denied me permission to interview inmates I have continued to receive letters and other communications describing continuing disturbances within the prisons. For example, on March 8, 1972 I received a report that it was widely believed among the prisoners at Lewisburg that prison authorities were about to transfer the elected inmate representatives to numerous other institutions in distant parts of the country. On March 9, 1972 I received a letter from an inmate at Lewisburg who claims that he is on the inmate committee, urging me to "have someone investigate the situation at Lewisburg" "as soon as possible." (Letter attached as Exhibit B hereto).

I am aware that the Bureau of Prisons has conducted such punitive dispersals of inmates on numerous occasions in the past. The dispersal of prisoners in such a situation makes it virtually impossible as a practical matter for a reporter to obtain full and contemporaneous information about the events in which the dispersed prisoners have participated or to which they may have been the only witnesses.

6. As a journalist with a continuing interest in matters concerning the federal prisons, I follow closely the reporting on prisons by major newspapers. I believe that there has been no comprehensive reporting in the public press of the

recent disturbances at Lewisburg, Danbury, and other federal prisons. There have been scattered articles in the press containing fragmentary information about these events, but to my knowledge a full and coherent account of what has happened has not been presented to the public.

7. On the basis of my experience as a reporter and as an Assistant Managing Editor responsible for making judgments on which stories are to be published, I am convinced that the inability of reporters to obtain on-the-scene interviews of participants or witnesses to the present occurrences is largely if not exclusively responsible for the sparsity of news stories during the last two or three weeks about these newsworthy and perhaps historic events.

8. The letters I have received are a wholly inadequate foundation on which to base a responsible accounting of the recent events. Relatively few prisoners write with fluency; and some prisoners in fact have very little knowledge of the English language. It has been my experience that despite whatever assurances may be given by prison authorities, inmates almost always believe that their outgoing letters are read by prison officials, and such fears lead to self-censorship. Letters do not permit the kind of critical inquiries and questioning in depth which are part of a well-conducted face-to-face interview, and they do not enable me to observe the demeanor of the inmate in order to determine the accuracy of his statements. Moreover, it is virtually impossible for me to check the statements in a prisoner's letter with other persons at the institution having knowledge of the matters referred to. If I visit a prison and conduct interviews I can talk to a number of individuals,

inmates and others, and from confronting such a variety of sources I can determine whether specific allegations are corroborated or not and I can thereby reach more reliable conclusions -- something which I cannot accomplish on the basis of letters. Moreover, the information I receive in an interview is generally timely when I receive it, whereas letters always involve some delay.

9. I have on some occasions in the past applied to officials of the Bureau of Prisons for permission to interview inmates in federal penitentiaries, and have, in fact, conducted such interviews with the full knowledge and permission of these authorities. I have conducted such interviews at Lewisburg Penitentiary and at the Federal Reformatory for Women at Alderson, West Virginia.


10. It has been my experience on the occasions of these interviews that the prison authorities were able to take and did take precautions adequate to protect my safety and to prevent any untoward consequences resulting from my visit to the prisons. At Lewisburg, I was accompanied on my interviews by a non-custodial member of the prison staff. At Alderson, on one occasion I was allowed to walk freely through the prison, interviewing prisoners at random as I went. On another occasion at Alderson I interviewed twenty-six members of the Inmate Council without any official accompaniment whatever. On no occasion was my interview followed by any disturbances of any kind within the prisons.

11. On several occasions I have conducted interviews at state prisons with the full knowledge and permission of the state prison authorities. In some instances I was allowed to speak in private with male prisoners whom I selected at random. On no occasion was my personal safety threatened, and on no occasion did my interviewing lead to any disturbances within the prisons.

12. In conducting such interviews in connection with a recently published series of articles on prisons and prison conditions I was told by prisoners, and had confirmed by prison officials, stories about large scale non-violent demonstrations similar to those apparently presently in progress, which had occurred months or years ago. To the best of my knowledge these events were seldom reported in the public press or other news media; although it is my judgment as a reporter and as an Assistant Managing Editor that they were of such significance that they would have received coverage if prisoners had been able to notify reporters and if reporters had been free to visit prisons to conduct interviews.

13. In the course of interviews I have conducted at numerous federal and state penal institutions, I have been told by a great many correctional officials that an adequate mechanism by which prisoners can publicly air their grievances about prison conditions is essential to the avoidance of outbreaks of prison violence. On the basis of these statements, and my own observations of prisoners and prison life, I am convinced that free

access by prison inmates to reporters would if anything help
avoid, rather than precipitate, outbreaks of widespread violence
in prisons.


BEN H. BAGDIKIAN

Subscribed and sworn to before me this 10th day
of March, 1972.


Notary Public

My Commission expires _____

My Commission Expires on 11, 1978

LAW OFFICES
WILLIAMS, CONNOLLY
& CALIFANO
1800 HILL BUILDING
WASHINGTON, D. C. 20006

AREA CODE 802
656-0862

- 7 -

BEN H. BAGDIKIAN
ASSISTANT MANAGING EDITOR
(202) 873-7442

Office of the Attorney General
1415 L Street, N.W. 20530-0000
WASHINGTON, D.C. 20005

March 2, 1972

Mr. Norman Carlson, Director
Federal Bureau of Prisons
101 Indiana Avenue, N. W.
Washington, D. C. 20537

Dear Mr. Carlson:

Let me renew in writing my request made to you verbally March 1 to interview prisoners in Lewisburg who are now or have been held in segregation as a result of a strike in that institution. As you know, information received by the press by other means, no matter how diligently pursued, was unsatisfactory and unclear.

I should also like to interview prisoners at Danbury who are being held in segregation, or Intensive Treatment Units, during the strike now in progress at that institution. Because of the dispute over punishment meted out to inmate negotiators in the Lewisburg case it is important to get direct access to prisoners in Danbury.

Sincerely,



BHB:b

Ben H. Bagdikian

Exhibit C

March 2, 1972

Mr. Ben H. Bagdikian
Assistant Managing Editor
The Washington Post
1515 L Street, N. W.
Washington, D. C. 20005

Dear Mr. Bagdikian:

Thanks for your letter.

As I discussed in our telephone conversation of March 1,
the Bureau of Prisons' policy does not permit press interviews
with inmates.

Attached is a copy of our recently issued Policy Statement
regarding inmate correspondence with representatives of the
press and news media.

Sincerely,



NORMAN A. CARLSON
Director

Exhibit D

Policy Statement

1220.1A

SUBJECT: INMATE CORRESPONDENCE WITH REPRESENTATIVES
OF THE PRESS AND NEWS MEDIA

2-11-72

1. PURPOSE. This Policy Statement establishes the policy of the Bureau of Prisons, with respect to contacts with the press. The purpose is to protect First Amendment rights of inmates, within the constraints of sound institutional management.
2. POLICY. Recognizing the right of inmates to have access to the news media, inmates may correspond freely with representatives of the press. Representatives of the press are encouraged to visit Bureau of Prisons institutions, to learn about and report on correctional facilities, activities, and programs.
3. DIRECTIVE AFFECTED. Policy Statement 1220.1 is superseded by this Policy Statement.
4. PROCEDURE.

a. Application

This Policy Statement applies to the news media, which is defined as the following:

A newspaper entitled to second class mailing privileges; a magazine or periodical of general distribution; a national or international news service; a radio or television network or station.

b. Procedure

- (1) An inmate may write to a representative, specified by name or title, of the news media. Correspondence to a newspaper may be sent through the Prisoners Mail Box, which provides opportunity for unopened correspondence with officials such as congressmen, judges, and other government officers. It shall be forwarded directly, promptly, sealed, and without inspection.
- (2) A representative of the news media may initiate correspondence with a particular inmate. Incoming correspondence from the news media will be inspected solely for contraband, or for content which would incite conduct which is illegal. Reject correspondence will be returned to the sender, with an explanation. Questions to the inmate may be presented through this correspondence, and the inmate may respond through the Prisoners Mail Box.

- (3) The inmate shall not receive any compensation, nor anything of value, for material submitted through this means to the media.
- (4) A transmittal slip, similar to the enclosed sample, will be attached to the outgoing FMB letter, and the mail will be sent each working day, in an institution envelope, and at government expense. Facilities with substantial numbers of psychiatric patients may also attach a statement, indicating that there are inmates in the facility who are psychotic, who have been found to be incompetent or of unsound mind, or who have other psychiatric problems.
- (5) Representatives of the press are encouraged to visit Bureau institutions for the purpose of preparing reports about institutional facilities, programs and activities. Press representatives should make advance appointments for visits. During an institutional emergency, the Chief Executive Officer may suspend all such press visits. During the emergency, information concerning the situation will be provided regularly to the press.
- (6) Press representatives will not be permitted to interview individual inmates. This rule shall apply even where the inmate requests or seeks an interview. However, conversation may be permitted with inmates whose identity is not to be made public, if it is limited to the discussion of institutional facilities, programs and activities.
- (7) When media representatives visit institutions, photographs of programs and activities may be taken. Inmates have the right not to be photographed by the press. Visiting press representatives should be requested to obtain permission before photographing inmates and should be advised that full front view photos of inmates are not encouraged, but if taken, releases must be signed by the inmates.
- (8) Press representatives may visit schools or business establishments which employ offenders in community programs, if the permission of the school or employer is obtained in advance. The rules outlined in paragraphs (6) and (7) above apply equally in the community situation.

- (9) Announcements of unusual incidents shall be made to local news media as promptly as possible by the Chief Executive Officer or by a staff member designated by him. The institution will prepare a statement for release to the media, briefly stating the facts. The text of such messages shall be transmitted to the Bureau as part of the reports required on the incidents to which they relate. If it can reasonably be assumed that the wire services or the Washington press will make inquiry at the Central Office, the text should be communicated to the Central Office by telephone.
- (10) Announcements related to Bureau policy, such as changes in institutional missions, type of inmate population, or physical facilities, as well as announcements of changes in executive personnel, will be made by the Central Office. Press inquiries on such subjects shall be referred to the Bureau Director.
- (11) Information about an inmate that is a matter of public record will be provided by the Chief Executive Officer or his representative to representatives of the news media upon request. Such information shall be limited to the inmate's name, age, offense for which convicted, court where sentenced, length of sentence, date of sentencing, date of arrival or transfer, general institutional assignment, parole eligibility date, and date of expiration of sentence. Other contents of inmate files are confidential. Requests for additional information about individual inmates shall be referred to the Central Office. The Chief Executive Officer of each institution, or his designated representative, shall be solely responsible for contacts with the press. Other staff members shall refer all press inquiries to the Chief Executive Officer.
- (12) Representatives of the media are encouraged to notify the Chief Executive Officer before publication or dissemination of information in inmate correspondence, whenever statements naming individual inmates or staff members are made in that correspondence. In such instance, the institution will give all possible assistance in providing background and a specific report on the statement provided by the inmate.

c. Exceptions

Requests for exceptions to the above regulations may be made to the Director of the Bureau. Any disputes as to meaning or application of the regulations will be resolved by the Director.

Norman A. Carlson

NORMAN A. CARLSON
Director, Bureau of Prisons

(Sample Transmittal Slip)

UNITED STATES PENITENTIARY

Leavenworth, Kansas

Date

The attached letter was placed in our Prisoners Mail Box for forwarding to you. The letter has been neither opened nor inspected. If the writer raises a problem over which this institution or the Bureau of Prisons has jurisdiction, you may wish to write to me or to the Director, Bureau of Prisons, Department of Justice, Washington, D. C. 20537.

You may write back to the inmate, and ask him questions. Your letter will be inspected for contraband, and for any content which would incite illegal conduct.

The Bureau of Prisons encourages the press to visit institutions, and learn about correctional programs and activities. If you wish to do this, please contact me.

Inmates may not receive compensation for material submitted to the media. If the person writing you names another inmate or a staff member in his correspondence, we request that you advise us of that fact before its publication. We will provide background information and specific comments whenever possible.

If the writcencloses for forwarding correspondence addressed to another addressee, please return the enclosure to me, or to the Director.

Warden

Lucky A. Johnson-36791
P.O. Box 1000
Lewisburg, PA 17837

Dear Mr. Bagdikian:

You please have some
one investigate the sit-
uation - here. at Lewisburg
the federal don't have
the federal get files
of a lawyer - (this)
it's a paper - hear
it done. please have
it done at once as
possible.

Thank you

Lucky A. Johnson
36791

P.S. I'm off the inmates
who are on the inmate committee
here.

Exhibit E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE WASHINGTON POST CO.)

and)

BEN H. BAGDIKIAN,)

Plaintiffs)

v.)

Civil Action No.)

RICHARD G. KLEINDIENST, Acting)
Attorney General of the United States)

and)

NORMAN A. CARLSON, Director,)
United States Bureau of Prisons,)

Defendants.)

District of Columbia) ss:

SUPPLEMENTAL
AFFIDAVIT

I, Ben H. Bagdikian, first being duly sworn, depose
and state as follows:

1. I am a Plaintiff herein and have previously given an affidavit in this case. (See Exhibit B to Complaint).
2. It has come to my attention and I have reason to believe since 8:00 A.M., today, March 10, 1972, that the disturbances at Danbury Prison are continuing at the present time. Approximately 80% of the inmate population continue refusing to work. Some of the inmate representatives selected by the inmates at the direction of the warden have been placed in punitive segregation, contrary to promises made by prison officials and that they are being physically and psychologically harassed by the staff.

3. I am further advised and have reason to believe that the work stoppage at Lewisburg Penitentiary has ended, but that members of the inmate negotiation committee, elected by the inmates at the direction of the warden and promised freedom from reprisals are in fact in punitive segregation under unsanitary conditions and are fearful for their safety.

4. Reports have also reached me during the last several hours that some participants in the negotiations at Danbury Penitentiary have been transferred to Lewisburg and also placed in punitive segregation, contrary to promises of no reprisals.

5. It is my judgment as a professional journalist that the reports reaching me suggest that I would be able to obtain information of significant and immediate news interest to the public by conducting interviews with prisoners at Lewisburg Penitentiary and Danbury Penitentiary.


BEN H. BAGDIKIAN

Subscribed and sworn to before me this 10th day
of March, 1972.


Notary Public

My Commission expires _____

My Commission Expires Jan. 31, 1978

United States Senate

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS
(PURSUANT TO S.C. 1, S. RES. 11, 80 CONGRESS)

WASHINGTON, D.C. 20510

March 3, 1972

Mr. Norman A. Carlson
Director
Bureau of Prisons
Indiana Avenue
Washington, D. C.

Dear Mr. Carlson:

I am writing to inquire about reports that inmates of federal prisons in Danbury, Connecticut, and Lewisburg, Pennsylvania, reportedly protesting prison and parole policies, have been refused access to reporters.

In its recent Policy Statement 1220.1A, issued February 11, 1972, the Bureau of Prisons states, "Representatives of the press are encouraged to visit Bureau of Prisons institutions, to learn about and report on correctional facilities, activities, and programs." While under Procedure (b)(5), the Bureau does not permit press interviews with individual inmates, it does allow "conversation with inmates whose identity is not to be made public, if it is limited to the discussion of institutional facilities, programs, and activities." It would appear from this statement that the Bureau's policy provides for some direct communication between prisoners and reporters as long as the identity of the prisoner is withheld and the subjects discussed are limited to "institutional facilities, programs, and activities."

I have taken note, also, of Procedure (b)(5) which gives the Chief Executive Officer of an institution authority to suspend all press visits during an "institutional emergency." Presumably, based on press reports, there is or has been such an emergency at Danbury and Lewisburg. While I am not familiar with the circumstances which presently exist at the Danbury and Lewisburg institutions, I am concerned about what is reported to be a total prohibition upon any direct communication between the protesting prisoners and reporters. One newspaper account of the protests at these two institutions indicates that Bureau officials themselves profess ignorance of the reasons underlying the protests. Surely, if this be the case, communication between prisoners and reporters is especially critical to the resolution of whatever difficulties may exist.

I shall appreciate your bringing me up to date on the situation at these two institutions with respect to the reported prisoner protests, the Bureau's interpretation of its own policy in these cases respecting reporters' access to inmates, and the rationale behind the reported decision to disallow any direct communication between inmates and reporters.

On the basis of the Bureau's new Policy Statement concerning inmate access to representatives of the news media, I know that you share my concern for the First Amendment rights of inmates.

With kindest wishes,

Sincerely yours,

Sam J. Ervin, Jr.
Chairman

SJE:lpe

A Prison Strikes Mystify U.S. Officials

By Ben H. Bagdikian
Washington Post Staff Writer

The longest and most complete prisoner strike in the memory of federal officials has been under way since Feb. 14, but officials here say they have no idea what has caused it.

All 1,236 prisoners in the Federal Penitentiary at Lewisburg, Pa., have refused to work for two weeks. They were provided no reprisals if they remained peaceful. However, all 16 inmates in the no-reprisal committee are now listed in punitive segregation and officials agree that there was no violence.

Other prisoner strikes in federal prisons during this same period have been or are in progress in Illinois and one strike was total. Combined, had the California Federal Penitentiary been had a total of all its prisoners for through attorneys who are permitted to visit inmates.

Federal officials in Washington, thrown into punishment cells for so long as to instance in what they claimed was violence. Prisoners used or threatened use of the no-reprisals promise.

An official spokesman for Norman Carlson, Director of

the Federal Bureau of Prisons, said that the promise was in effect and that no reprisals had been taken.

Yesterday, the same official told by The Washington Post that it had information that reprisals had in fact, been taken, then conceded that all 16 inmate representatives had been thrown into punitive segregation, or "the hole." Asked why, he said that they had failed to produce specific demands by a deadline set by Lewisburg Warden Noah Allred.

The spokesman said there had been no violence at any time. Asked if he felt this was a violation of the no-reprisal pledge, he replied that failure to meet the deadline warranted the punishment.

In Marion, Ill., the most secure of all federal prisons, a week-long strike of "most" of the 500 prisoners also began Feb. 14, the spokesman said.

Initially, the spokesman said that both Carlson and the Marion warden, George Pickert, were also mystified by the reason for the work stoppage. Pressed, he said it might be related to the fact that some

Marion prisoners testified in court case "of interest to the prison population at Marion" and when the inmate witnesses returned to the prison, they were thrown into punitive segregation. At that point, most of the Marion prisoners went on strike.

Asked whether the court case involved treatment within the prison, the official spokesman said he did not know. He said the punishment of the testifying prisoners was not related to what they told the court but because they created a disturbance on the bus returning them to prison from the courtroom.

In Danbury, Conn., about 60 per cent of the prisoners have conducted a peaceful work stoppage for the last two days. There are about 750 inmates in the Connecticut prison. Sunday, The Rev. Daniel Phipps, recently released from Danbury, said on the television program "Select the Facts" that there were publicly anticipated disturbances in a number of federal prisons. Officials said they are also mystified by the causes of the Danbury strike.

In Lompoc, Calif., all 939 prisoners have been locked in their cells for a week because, officials said, of tension between Mexican, American and black inmates.

In a letter to The Washington Post last week, a prisoner mentioned serious grievances with federal parole procedures and alleged public re-statements by parole officials.

The prisoner said that the striking inmates had committed themselves to nonviolence but that "in all probability it will not receive . . . news media coverage" because of that.

Asked if a reporter could interview the 16 inmate representatives now in isolation at Lewisburg, Carlson's spokesman refused, saying it was against federal regulations to permit personal contacts between prisoners and journalists.

2 Prisons Still Hit By Unrest

The Washington Post
Thursday, March 2, 1972

Norman Carlson, director of the federal Bureau of Prisons, said yesterday that most inmates of the federal prison at Danbury, Conn., are still on strike and about 250 prisoners at the Lewisburg prison are still locked in their cells.

Otherwise, he said, previously disturbed federal prisons at Marion, Ill., and Lompoc, Calif., have returned to normal.

Carlson continued to express ignorance of why the strikes were staged and continued to refuse to let a reporter interview inmates selected by the prisoners to represent them who have since been placed in isolation.

Prisoner letters yesterday mentioned such grievances as parole procedures, the beginning inmate work wage of 10 cents an hour, poor working conditions in the prison factories, poor food, and harassment by guards.

50 Inmates Indicted In N.J. Prison Strike

TRENTON, N.J., March 1 (UPI)—Forty-one inmates have been indicted for kidnapping the warden and guards, assault and other offenses during an uprising at Rahway state prison last Nov. 24-25, state officials said today.

Four other inmates were indicted for taking two guards hostage during a disturbance at the Yardville youth reception and correction center last Dec. 15-16 and five prisoners were indicted for assaulting a Yardville guard Dec. 23.

State Attorney General George F. Kuzley Jr. said the grand jury that returned the 50 indictments Feb. 2 and Feb. 9 found no evidence to warrant charges against four Yardville guards who were charged by inmates with beating a prisoner in an incident that allegedly started the Dec. 15-16 disturbance.

Kuzley said there were no witnesses to corroborate the story of the inmate who claimed he was beaten.

Prison Strike

DANBURY, Conn. — A work stoppage at the federal prison in Danbury swelled to 100 per cent effectiveness yesterday and prison personnel worked 12-hour shifts to cover jobs previously performed by inmates, prison officials said.

"With the absence of inmate help in the kitchen, it has been necessary to reduce the number of meals per day from three to two," said Warden John Norton.

The work stoppage began Monday at Danbury, which has about 700 inmates. Prison officials say they have been meeting with inmates to resolve certain issues, but they decline to say what those issues are.

The Washington Post
Friday, March 3, 1972

EXHIBIT 3

[illegible]

conflict of the interests of the United States with the interests of the world.

"I have a small, but very strong
 feeling that the American
 people are entitled to know the
 truth about the activities of the
 CIA. I am not a member of
 the CIA, but I am a member of
 the American people."

Seal announced that the two men had agreed to give the boy access to the convention, but then Chief Justice rejected Seal's characterization of him as the "Spartan" territory "Spartan" leader.

erred respond," said Berger. "They would feel that Berger and Berger are in need of spiritual leadership," he said. "But I am not your

The House of Deafness

The House of Delegates is expected to deliver whatever the organized law firms have some involved in their litigation and discovery problems. The state bar association recommended an amendment to be presented to the House of Delegates on January 10, 1990, and on January 11, 1990, the House of Delegates passed a resolution to support the state bar association's recommendation. The House of Delegates also passed a resolution to support the state bar association's recommendation.

An expected obstacle to the transfer of control is the unwillingness of certain states to give up their ability to regulate their telephone system. The Federal Communications Commission (FCC) has proposed uniform rules, but states are not likely to agree to them. The Federal Communications Commission has proposed a plan for a national network of telephone exchanges, but it is not clear if the states will agree to it.

Under law enforced by the Treasury Dept., the Federal Reserve Bank of New York is the only bank in the country that can accept deposits from foreign banks. The bank is the only one in the country that can accept deposits from foreign banks. The bank is the only one in the country that can accept deposits from foreign banks.

Gov. Robert A. Ho W. Darrin
of Washington, a former
president attorney general,
said the private group's pur-
pose was "to fill an af-
fected area in a general pro-
minent position."

The lawyer, completely
was defended in fact by the
and other but had to be
request of President Kennedy
to represent Negroes and other
rights worker who said that
and lawyers to take them
case.

William C. Sullivan
Deputy Director Washington Post
Washington D.C.

Washington, D.C.
Feb - 17 - 1972

I am advising this letter to you
because I'm going to ask for help. I was
at the Feb. 16-17-18 of the
Council that 5 members of the committee
to which I was appointed, by the Department
of Justice at their luncheon presentation
have been taken to being completely
this committee was born by the fact that
of the previous Feb.

I will say enough that my duty
is in "good danger".
With this letter I'm happy you to
please. I don't know the subject about
my duty and the duty to the other
members of the committee.

The information that they are giving is
false.

Just like the official did at "action"
this demonstration is planned via an
action. No reference "ad" ad action.

These officials are the ones who are investigating us to commit a act of violence. As they can exit this as Plot.

Volstead has done much in other institutions, and has done nothing for the inmates. It has only since the passages of the Administration. One would like to see justice to the friend, who they want to hang. They have divided us, based on Request of week the above, is one of them.

The entire population is one of 1000 of us, except the inmates who work in the hospital.

Please, dear, what we have to tell you, please!

if by any chance, anything happens to me, I would appreciate if you let my family know of my medical condition.

Calvin M. S. S. S.

559 W. 100th St.

New York City

Thank you very much for your consideration.

Respectfully,
Calvin M. S. S. S.

BUREAU OF PRISONS
WASHINGTON, D. C.

1220.1

10-11-65

POLICY STATEMENT

SUBJECT: REQUESTS FROM PUBLIC INFORMATION MEDIA

1. PURPOSE. This Policy Statement establishes responsibilities, policies and procedures to be followed by institutional personnel in dealing with inquiries by representatives of the press.
2. DEFINITION. The press includes newspapers, magazine and other periodicals, wire services, radio and television stations and networks, free-lance authors and photographers, and all others whose purpose is to convey information to a public audience.
3. RESPONSIBILITIES. The Warden, Superintendent or Director of each institution shall solely responsible for contacts with the press. In his absence, the Acting Warden, Superintendent or Director shall assume this responsibility. Other staff members shall refer all press inquiries to the Warden, Superintendent or Director.

4. POLICIES.

- a. Information about an inmate that in a matter of public record will be provided by or at the direction of the Warden, Superintendent or Director to any person who makes proper inquiry during normal business hours. Such information shall be limited to the inmate's name, offense for which convicted, length of sentence, date of sentencing, date of arrival or transfer, parole eligibility date, and date of expiration of sentence.
- b. Contents of inmate files, except for the data enumerated in paragraph (a) above, are confidential. Legitimate requests for additional information about individual inmates shall be referred to the Central Office.

DISTRIBUTION:

All Institutions	- 4
Headquarters	- 2
1400	- 2
1411	- 2

Appendix A

- c. Representatives of the press should be encouraged to visit Bureau institutions for the purpose of preparing reports about institutional facilities, programs and activities. Press representatives should be advised to make advance appointments for visits, and institution staff members should be designated to serve as guides. Such staff members may respond to questions about facilities, programs and activities but shall refer all questions about policy and about individual inmates to the Warden, Superintendent or Director.
- d. Press representatives should not be permitted to interview inmates. This rule shall apply even where the inmate requests or seeks an interview. However, conversation may be permitted with inmates whose identity is not made known if it is limited to the discussion of institutional facilities, programs and activities.
- e. Inmates have the right not to be photographed by the press. Visiting press representatives should be requested to obtain permission before photographing inmates and should be advised that full front view photos of inmates are not encouraged, but if taken, releases must be signed by the inmates. In cases of escape, official photos will be made available to the press.
- f. Press representatives may visit business establishments which employ work releasees if the permission of the employer is obtained in advance. The rules outlined in paragraphs (d) and (c) above apply equally in the work release situation.
- g. Announcements of escapes, disturbances, accidents and fatal or severe assaults shall be made to local news media as promptly as possible by the Warden, Superintendent or Director or by a staff member designated by him. It is advisable to prepare a statement for release by telephone or messenger to all media, briefly stating the facts. The text of such messages shall be transmitted to the Bureau as part of the reports required on the incidents to which they relate. If it can reasonably be assumed that the wire services or the Washington press will make inquiry at the Central Office, the text should be communicated to the Central Office by telephone.
- h. Death of an inmate by natural causes is not normally newsworthy. However, upon the death of an inmate who has attained national notoriety, the procedure outlined in paragraph (g) above will be followed.
- i. All announcements related to Bureau policy, such as changes in institutional missions, type of inmate population, or physical facilities, as well as announcements of changes in executive personnel, will be made by the Central Office. Press inquiries on such subjects shall be referred to the Bureau Director.

- 3
- J. Clippings from local media relating to institutional activities shall be collected and forwarded to the Director at the close of each calendar month.

WILLIAM E. ALEXANDER
WILLIAM E. ALEXANDER

Director, Bureau of Prisons
Commissioner, Federal Prison Industries, Inc.

AFFIDAVIT

DISTRICT OF COLUMBIA) ss:

I, Norman A. Carlson, being duly sworn, do hereby certify that I am the Director of the Federal Bureau of Prisons. As Director, I am responsible for the development and promulgation of the policies which govern the operation of the various institutions which comprise this Bureau.

On February 11, 1972, I promulgated to all federal institutions Policy Statement 1220.1A, entitled "Inmate Correspondence with Representatives of the Press and News Media." A copy of that policy statement is attached and made a part of this affidavit.

The revision has been undertaken in order to accommodate two prevailing considerations: communication of inmate grievances, complaints, and other matters to the press; and the right of the public to learn, through press coverage, about correctional activities. At the same time, I recognized my duty to conduct all correctional operations and programs in such a way that the security of the institutions and the safety and well-being of inmates and staff members are assured.

Before revising the old policy, I obtained comments from each of the Chief Executive Officers of federal institutions. I had a lengthy discussion with the wardens of the nine largest institutions. I discussed the subject area with state correctional administrators at a recent conference in Atlanta, Georgia and with officials in the Department of Justice having a particular interest in the field.

Based on these discussions, I was of the opinion that a new policy must be drafted which would grant to the inmate access to the press to express his grievances and would grant the public the opportunity, through press coverage, to examine correctional practices and programs.

From conversations with my staff and with the state administrators, including many from those listed by plaintiffs in the support of their complaint, I learned that, in many states, interviews were permitted at the

discretion of the local warden with virtually no direction or standards. I felt that these practices offered little guidance to us. One large state, which had adopted state-wide standards for press interviews, we learned had now returned to a policy of no interviews in view of difficulties arising from their previous policy.

It became apparent that the consideration we were trying to accomplish could be reached by another means, by sending all inmate correspondence sealed and unopened directly to the press and subjecting incoming correspondence to inspection only.

Under this new policy, outgoing correspondence procedures will be accomplished by authorizing inmates to use the Prisoners Mail Box system for this purpose. Under this system mail is sealed and deposited in special boxes. Envelopes deposited therein are collected daily, and forwarded unopened to the addressee. This is precisely the means which inmates have for sending sealed communications to the courts, Senators and Congressmen, and to various officials in the executive branch of government. The availability of this correspondence is made known to all inmates, and it is used extensively.

At the same time, we will permit press representatives to send mail to any inmate they choose. Matters initiated by inmates can be pursued in this manner and questions can be posed to the inmate, without limitation. Since we are primarily concerned about what comes into the institutions, this incoming correspondence will be inspected, but only for contraband (drugs, weapons, and money, for example) and for content which incites illegal activity (escape and riot, for example).

We encourage all media representatives to visit our institutions, to observe activities, and to report their findings.

These objectives and changes in policy have been incorporated in the attached Policy Statement. It permits inmates, without limitation as to frequency, volume and subject matter, to send all information, complaints, and grievances they wish to any media representative, as defined in the policy statement, whom they name. It permits incoming correspondence from the press, with the

minimum amount of restriction, as required for the security and safety of the institution. It encourages the press to inform the public about corrections, not just in abstractions, but by visiting institutions, talking with staff and inmates, and discussing programs, activities, and problems with them.

/s/ Norman A. Carlson
NORMAN A. CARLSON
Director, Federal Bureau of
Prisons

Subscribed and sworn to before me this 21st day of
March, 1972.

/s/ [Illegible]
Notary Public
My Commission Expires
Aug. 14, 1972

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 467-72

THE WASHINGTON POST CO., ET AL., PLAINTIFFS

v.

RICHARD G. KLEINDIENST, ET AL., DEFENDANTS

MEMORANDUM

The Washington Post, by this application for show cause order and immediate relief, seeks an order of this Court directing that its employees be permitted to interview inmates at federal penal institutions located in Lewisburg, Pennsylvania, and Danbury, Connecticut. Interviews are sought of a limited number of inmates willing to be interviewed and without attendance by prison officials.

Information has reached the *Post* from prisoners and other sources indicating that prisoners may have been subjected to excessive discipline and inappropriate restrictions incident to recent strikes or work stoppages at each of these institutions. The *Post* has been denied permission to interview by reason of a Policy Statement issued by the Bureau of Prisons on February 11, 1972, dealing with contacts with the press. The Policy permits prisoners to communicate with the press by unopened mail and also permits the press to communicate with prisoners by mail, subject only to inspection of incoming correspondence for contraband or contents, for example, which might incite escape or riot. While the *Post* has received some letters from prisoners, its representatives, based on experience in the field, feel that interviews are required to establish the validity or invalidity of information received and to explore various aspects of complaints by confidential interviews in some depth.

The Policy Statement provides as to interviews:

- (6) Press representatives will not be permitted to interview individual inmates. This rule shall apply

even where the inmate requests or seeks an interview. However, conversation may be permitted with inmates whose identity is not to be made public, if it is limited to the discussion of institutional facilities, programs and activities.

An affidavit filed by the Director of the Bureau of Prisons states that this Policy was evolved with regard to the safety and wellbeing of inmates and staff members after discussion with wardens of nine large institutions, review of the problem at an administrative correctional conference in Atlanta, and examination of state practices.

The Court, after hearing the parties at length, will in its discretion refuse to grant any interim temporary relief. The issues raised by the complaint are set down for hearing on the prayer for preliminary injunction Thursday, March 23, 1972, at 9:30 a.m.

The mandatory nature of the order requested changes the status quo, alternative means of communication are available and have not been fully used, and the evidence in the affidavit of the Director of the Bureau of Prisons indicates that the Policy was worked out with thought and care. These considerations point to the need for a full record before the rights of the press in this difficult area can be resolved. At this stage the Court is unwilling to rule as a matter of law that the First Amendment requires that members of the press be permitted to interview prisoners confined in institutions not available to members of the public. While it is clear that the prisoners and of course the press have First Amendment rights, the issue is tendered as to whether the regulations of the Bureau of Prisons are overly broad or are the least restrictive alternative consonant with the affirmative requirements of the First Amendment. A determination of this issue requires proof and a better understanding of the nature and extent of both the constraints that may properly be required in the interests of sound institutional management and the right of the public through the press to be adequately informed concerning the operations of the prison system.

/s/ [Illegible]

March 13, 1972.

United States District Judge

Watson/ska

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 467-72

THE WASHINGTON POST Co. and
BEN H. BAGDIKIAN, PLAINTIFFS

v.

RICHARD G. KLEINDIENST, Acting Attorney General
of the United States and
NORMAN A. CARLSON, Director
United States Bureau of Prisons, DEFENDANTS

Washington, D. C.
March 23, 1972

The above-entitled cause came on for hearing on Plaintiffs' Motion for Preliminary Injunction before the HONORABLE GERHARD A. GESELL, United States District Judge, at 9:40 a.m.

APPEARANCES:

JOSEPH A. CALIFANO, JR., Esq.
CHARLES WILSON, Esq.,
RICHARD COOPER, Esq.,
Of: WILLIAMS, CONNOLLY & CALIFANO,
Counsel for plaintiffs

JOSEPH M. HANNON,
MICHAEL A. KATZ,
Assistant United States Attorneys,
EUGENE N. BARKIN, Esq.,
JULIA S. WILLSON, Esq.,
Department of Justice,
Counsel for Defendants

CONTENTS

Witnesses	Direct	Cross	Redirect	Recross
<i>Plaintiffs':</i>				
BEN H. BAGDIKIAN (Plaintiff)				
By Mr. Califano	6			
By Mr. Hannon		26		
By Mr. Califano			56	
By Mr. Hannon				58
BENJAMIN MALCOM				
By Mr. Wilson	60			
By Mr. Hannon		80		
By Mr. Wilson			88	
LEROY ANDERSON				
By Mr. Wilson	91			
By Mr. Hannon		102		
By Mr. Wilson			105	
<i>Defendants':</i>				
RAYMOND K. PROCUNIER				
By Mr. Hannon	109			
By Mr. Califano		126		
NOAH L. ALLDREDGE				
By Mr. Katz	137			
By Mr. Califano		156		
JOHN J. NORTON				
By Mr. Katz	172			
By Mr. Califano		185		
NORMAN A. CARLSON (Defendant)				
By Mr. Hannon	187			
By Mr. Califano		206		

CONTENTS—(Continued)

EXHIBITS

<i>Plaintiffs':</i>	For Identification	In Evidence
No. 1 Amendment to rules and regulations dated January 4, 1972.	63	67
No. 2 Guidelines for identifying members of the news media.	63	67
No. 3 Amendment to rules and regulations.	63	76
No. 4 Memorandum dated March 22, 1972 from Mr. Walsh to Mr. Malcolm.	76	76
No. 5 D. C. Corrections Department Order 1300.3B, dated January 24, 1972.	93	95
No. 6 D. C. Corrections Department Order 1300.3A, dated April 2, 1971.	93	95
No. 7 D. C. Corrections Department document 1300.3, dated November 2, 1966.	93	95
No. 8 D. C. Corrections Department document 1300.1, dated August 10, 1956.	93	95

PROCEEDINGS

[3]

THE DEPUTY CLERK: Civil Action No. 467-72, The Washington Post Company, et al., v. Richard G. Klein-dienst, et al. Mr. Joseph A. Califano, Mr. Richard Cooper, Mr. Charles Wilson, for the Plaintiffs. Mr. Joseph M. Hannon, Mr. Michael A. Katz, Mr. Eugene N. Barkin, Miss Julia S. Willson, for the Defendants.

THE COURT: Mr. Califano, do you have any testimony you wish to offer on this motion?

MR. CALIFANO: Yes, we do, Your Honor.

THE COURT: Then I believe we should proceed to take it.

MR. CALIFANO: All right, Your Honor. Mr. Bagdikian.

MR. HANNON: May I be heard for a moment, please, Your Honor?

THE COURT: Oh, certainly, Mr. Hannon.

MR. HANNON: If Your Honor please, we filed an opposition to the motion for preliminary injunction.

THE COURT: Yes.

MR. HANNON: And we have, without equivocation, taken a position that there is no involvement of the exercise of First Amendment rights in this litigation.

THE COURT: I have read your papers.

MR. HANNON: On the basis of that, together, if Your Honor please, with the policy statement that is a matter of [4] record in this Court, we think as of now we are entitled to have the motion for a preliminary injunction denied without testimony and we so move the Court.

THE COURT: Well, I think I should make a record.

MR. HANNON: I take it Your Honor has denied the motion?

THE COURT: Yes, if you want me to formally deny the motion. I think in my discretion I should hear some evidence with respect to it. Plaintiffs have some rights here.

MR. HANNON: I understand that. You can take it under advisement and take the testimony. That is an alternative. I just want it on the record we have moved

for it and Your Honor can rule now or later. I think Your Honor has that discretion.

THE COURT: I think I should have a record. I was avoiding ruling on the motion. You seemed to want me to rule. If you want me to rule, I will deny it.

MR. HANNON: I would prefer you defer it.

THE COURT: I note your objection on the record and I will take the testimony. I leave it open.

MR. HANNON: Thank you very much.

MR. CALIFANO: Your Honor, we have three witnesses.

THE COURT: Very well.

MR. CALIFANO: Mr. Bagdikian, from the Post, and two other witnesses we can put on now or in rebuttal.

THE COURT: That is up to you. It is your case.

[5] MR. CALIFANO: Mr. Bagdikian.

I would, Your Honor, like to, if I may, deal with one point that is in the papers of Defendants, which is that the relief we are asking for now is the ultimate relief we are asking for, and make it clear that we do not believe that to be so. What we are asking for now, as indicated in our order, is very narrow relief. It is that Mr. Bagdikian and/or another reporter from the Post be admitted to two prisons, Danbury and Lewisburg, for a limited period of time to cover these stories, the stories relating to these two strikes that have taken place there, their causes, and the actions resulting from them, and to interview a limited number of prisoners, namely, those who were on the negotiating committees and perhaps a few others at those prisons, in order to handle this story. The ultimate relief we are asking for is to strike down the regulation as it now stands to open access to all prisons, all Federal prisons for the Washington Post, and to provide an order for new regulations to be issued by the Bureau of Prisons which would permit a more reasonable policy of press access.

Mr. Bagdikian.

WHEREUPON—

BEN H. BAGDIKIAN

was called as a witness by the Plaintiffs, and having been first duly sworn, was examined and testified as follows:

[6] DIRECT EXAMINATION

BY MR. CALIFANO:

Q Would you state your name and address, please.

A Ben H. Bagdikian, B-A-G-D-I-K-I-A-N.

Q And your address, please?

A 4410 Albermarle Street, Northwest, Washington, D. C.

Q Mr. Bagdikian, where are you employed?

A At the Washington Post.

Q Would you describe briefly your present position and your professional career?

A I am an assistant managing editor of the Post and my duties there consist of being an ombudsman, which means listening to major complaints about the paper, commenting on the performance of the paper and other media publicly, and then from time to time reporting certain stories in depth.

I first became a newspaperman when I graduated from college in 1941. I worked for one year for the Springfield Morning Union at Springfield, Massachusetts. After service in World War II, I was for a short period a magazine editor in New York City. From 1947 until 1962, I worked for the Providence Journal and the Evening Bulletin in Rhode Island, as a reporter, special writer, columnist, foreign correspondent and chief Washington correspondent. From time to time I have had foundation grants for study of the press. The Ogden Reed Foundation and a John Simon Guggenheim Foundation fellowship. I was for [7] a while a contract writer with the Saturday Evening Post and have contributed to other magazines. For two years I was a director of the project of the Rand Corporation on the future of the

news media, which resulted in a book which was published two years ago.

Since January 1970, I have been employed by the Washington Post as its national editor, then as assistant managing editor for national news, and now as an assistant managing editor.

Q Mr. Bagdikian, have you had experience in covering prisons?

A Yes, I have.

Q Would you describe that experience?

A While a newspaperman in Rhode Island over a period of two years, I covered stories which necessitated going to the Rhode Island State Prison, interviewing prisoners, and prison officials, for various stories ranging from narcotics in prisons and individual cases of prisoners. For four months from September to January in this past year, I worked on a special series of articles on the American prison system for the Washington Post.

Q Did you visit state, local and Federal prisons?

A I did.

Q Would you describe briefly for the Court your experience in terms of access to inmates at the state and local [8] prisons you visited?

A There was a great variety of policy among prisons on access to prisoners and even to the prisons by newspapermen. In general I got the impression that the more difficult and poorer the reputation a prison had, the less accessible it was to outside examination. But in some places, there was freedom to interview prisoners in private and even use their names if they consented. In other places, there was not.

I interviewed prisoners in California privately, with the permission of the authorities. I interviewed them in South Carolina and in the jails of New York City.

Q Would you describe briefly your experiences in Pennsylvania?

A Which experience in Pennsylvania?

Q Your access experience in terms of prisons there.

THE COURT: Are you talking about the state prisons?

BY MR. CALIFANO:

Q The state prisons.

A The state prisons. I toured a state prison, the Graterford State Prison, and then for one week I was incarcerated in the Huntingdon State Penitentiary in Pennsylvania as a prisoner, unknown to the warden or the other inmates, where, of course, I had access to prisoners and spoke freely and privately with them.

Q Did you visit Federal prisons in connection with the [9] series of Post stories?

A I did.

Q Which Federal prisons?

A Lewisburg Federal Penitentiary and the Reformatory for Women at Alderson, West Virginia.

Q Would you describe your access experiences at that time?

A In both places I was cordially welcomed in the institution and offered tours of them and lengthy talks with the wardens in both cases to discuss their philosophy and experience in prisons. At Lewisburg, a photographer and I were conducted about parts of the prison. We could speak casually to prisoners whom we came across in the presence of the staff. At Alderson, we were afforded the same privileges except that we were permitted to go into one of the women's dormitories unaccompanied, and speak to women prisoners in private without the presence of a staff member, use their names if they consented. Then in addition to that, at Alderson they have a permanent inmates council, where each of the 17 housing units elects two members, and I asked that as many of those members as possible be gathered; and they were; and out of about 34 members, something like 26 were there. The warden and other staff members left the room, and we spoke in private about every subject that we wanted to.

THE COURT: Now, Mr. Bagdikian, was that before the [10] promulgation of the regulation that is before me? That regulation is dated February 12, 1972, is it?

MR. CALIFANO: February 11, Your Honor.

THE COURT: February 11, 1972. Was it before February 11?

THE WITNESS: Yes, it was, Your Honor.

BY MR. CALIFANO:

Q You say, "we," Mr. Bagdikian. Did you have someone with you?

A Yes, there was a photographer from the Post?

Q What was his access experience?

A It was a woman photographer and she had the same access as I. We were told not to take pictures of prisoners with their faces showing unless the prisoner gave consent, in which case a waiver would be signed. We were not interested in photographing prisoners in a personally identifiable way. We were permitted to take photographs, for example, in the visiting room in Lewisburg, and we were told that visitors there, prisoners and their visitors had to be told that there would be a newspaper photographer, that they did not have to be photographed if they didn't want to. If they did wish, they could turn their faces.

When we went through some of the prison factories, many of the prisoners wanted their pictures taken and we had to persuade them to turn their faces so they would not show.

[11] **Q** Mr. Bagdikian, have you recently become interested in any particular Federal prisons?

A Yes, I have.

Q Which prisons and why and when did you become interested in them?

A I became interested in Lewisburg Penitentiary and the Danbury Correctional Facility because of reports of a complete work stoppage at Lewisburg and an almost complete work stoppage at Danbury.

I learned of these things in a variety of ways. The events that followed, approximately February 14, 15, of this year, I heard from sources I had developed while working on this prison story, ex-prisoners, from sources on Capitol Hill, from lawyers of inmates, and others.

MR. HANNON: Your Honor, I don't object within certain limits but I do object to this now. He is telling us nothing but hearsay, what he heard from sources on Capitol Hill. I understand there is no jury present.

THE COURT: I think that is all in the papers anyhow. I will sustain your objection.

THE WITNESS: I finally heard in the form—

MR. HANNON: I objected, Your Honor. I understood you sustained it.

THE COURT: The question is, you became interested in the work stoppages, and you have answered that.

[12] Next question.

BY MR. CALIFANO:

Q What did you do when you became interested, Mr. Bagdikian?

A Eventually I called the Federal Bureau of Prisons and asked them about the work stoppage. What was at issue at the time, one of the major issues at the time was the fate of the elected inmates who were to represent the prisoners on grievances which were apparently the cause of the work stoppage. I called them only after I had received a number of letters from prisoners telling me about this, complaining about treatment, and from their lawyers.

Q Did you call them to ask to go to visit the prison at that time or just simply to get their comments?

A Originally, to get their comments and information.

Q At some point, did you ask to visit the prisons?

A I did.

Q When?

A I asked—

Q How and to whom did you place your requests?

A On March 1, I called the Bureau and asked to visit the prisons. I spoke to George Farkas, who was in charge of the public relations for the prisons. I asked to visit Danbury and Lewisburg for the purpose of interviewing the members, the elected members of the inmate negotiating committee, and a [13] certain number of other inmates about whom some allegations had been made.

Q What was their response?

A That the regulations did not permit that.

Q What did you do then?

A I wrote a letter to Norman Carlson, the Director of the Bureau, asking the same thing.

MR. CALIFANO: Would you mark this for identification?

THE COURT: I take it that is in the record. It is attached to the papers, is it not?

MR. CALIFANO: I am not sure it is attached to our memorandum.

THE COURT: It is attached to your memorandum, the letter and the refusal.

MR. CALIFANO: Then it is not necessary. Let me just give it to the witness so he can at least have it in front of him.

THE WITNESS: Yes, this is the letter I received from Mr. Carlson.

BY MR. CALIFANO:

Q What was the letter you got back from Mr. Carlson?

A Said that the policy of the prison system did not permit what I had asked.

Q What was your next step, Mr. Bagdikian?

A I consulted with my superiors, Mr. Howard Simons, [14] the managing editor of the paper, and Benjamin Bradlee, the executive editor; and we decided that this was a story of some importance, that it was important in the proper telling of the story to speak to these prisoners, and that we should take steps to try to do so.

Q Mr. Bagdikian, you were here at the hearing in this case about ten days ago. What did you do after that hearing?

A After that hearing, I called Mr. Carlson at the Bureau of Prisons and asked for permission to go to Lewisburg and Danbury in order to interview the members, the elected members of the inmate negotiating committee and a certain number of other prisoners about whom some allegations had been made.

Q What did Mr. Carlson say?

A He said I would be welcome at both prisons, that I would be welcomed there to take tours of the prisons and he urged me to take tours of the prisons and to walk around and inspect the prisons.

I told him that was not the purpose of the visit but that I would like to go there anyway; and he said that I would be welcome there and he would notify the wardens that I would be there.

Q Did you ask Mr. Carlson whether you could speak to these prisoners?

A Yes, I did.

Q What did he say?

[15] A He said that was against prison regulations.

Q Did you visit Lewisburg and Danbury?

A I did.

Q Would you describe briefly what happened at Lewisburg for the Court?

A I spoke to the warden and told him my wish, which was to interview these prisoners; and he repeated that this was forbidden by Bureau policy.

Q Did you identify the prisoners you wanted to interview?

A I told him I wanted to speak to the members of the inmate negotiating committee and certain other ones about whom there had been allegations of mistreatment.

Q And what did the warden say?

A He said that would not be permitted under the regulations.

Q Did you visit any prisoners at Lewisburg?

A I did.

Q Would you describe the circumstances?

A Warden Alldredge, at Lewisburg, said that he would go so far as to permit me to select out of the prison population of 1300, or so, 15 prisoner cards at random, names unseen, assuring me that those card files included the total population, including the inmate negotiating committee and including men in segregation; and that any prisoner whose card I pulled would [16] be available in a group interview in private.

I did do that.

Q Would you describe that group interview briefly?

A Because of various transfers and men being in the hospital, and so forth, we ended up with ten men in a room in the education department of the prison, without a staff member present. The ten men, the ten inmates

were there. I was not to use their names but I had their names and numbers in order to confirm that these were in fact the men whose cards I had pulled out, as they seemed to be.

Some of them were quite nervous on being there and immediately wanted to know why they were there, who I was, and what was this all about. I explained to them. Some of them asked if they were required to stay there; and I said they were not, and that no one should stay there if he didn't want to; that this was completely voluntary. A few left.

Before they left, there were ten in all, when we started. I mentioned that I was interested in finding out about the strike and what had happened to the strike committee members and certain others. I said I had received letters from prisoners; and there was a look of puzzlement among some of those prisoners in that room. I said: You know you can write letters to the press that are uncensored now?

And four of them said they did not know that. The remaining six said they did know that but they didn't really [17] believe that the letters were uncensored.

I asked them also how they felt about being interviewed in a group rather than individually in private. One of the prisoners said: Let me explain about this. He said: Every man in this prison wants to get out of here and he wants to get out of here in any way he can almost; and one way a man thinks he can get out is by giving information to people who run the prison and to the authorities. He said: Look at this boy Douglas down in Harrisburg, who has money, who has freedom, he has everything because that is exactly what he did. We may be sitting here and I will tell you something, and one of these other men may then go and tell the prison authorities what I said; or these may be all good guys and they will tell their cell mate or tell someone else, and he will say what I said or he will distort what I said or he will lie; and they may be looking for a witness against me in a trial or something to be said to a parole board. So that any time you say anything in a group of inmates, you have to be very very careful. So

he expressed great doubt about the candor that was possible in a group interview.

With this question, as with others, I asked the other inmates their attitude toward this particular statement; and they all agreed.

Q Mr. Bagdikian, did you find the group interview satisfactory for your purposes?

[18] A Not for the purpose that I visited the prison.

Q Why not?

A Because I visited the prison to talk firsthand to the principals in the case who were the members of the negotiating committee; and they were not in that group.

Q Mr. Bagdikian, did you go to Danbury?

A I did.

Q What happened there?

A I was similarly welcomed by Warden Norton, who explained to me that I was free to visit the whole institution, and urged me to do so, but that he was forbidden to permit me to speak to any particular prisoner and, of course, to the members of the elected negotiating committee there.

Q What did you do there? Did you specifically ask to speak to individual prisoners?

A Yes, I did.

Q What did the warden offer you in response to that; and what did you do?

A When I told him my Lewisburg experience, he said he would offer the same thing. He would permit me to pick names at random of prisoners and speak to them as a group in private. I thanked him but I declined the offer.

Q Why did you decline the offer?

A Because it was useless as a way of getting to the information that I needed.

[19] Q Mr. Bagdikian, you have in front of you Mr. Carlson's letter, and attached to that letter is the Bureau of Prisons policy of February 11.

On Page 2 of that policy there is Paragraph 4(b)(6), relating to interviews. Would you turn to that.

A Yes.

Q Did you discuss that with the wardens at these prisons?

A At great length.

Q Would you explain briefly to the Court what they said to you in terms of interpreting the phrase, "Discussion of institutional facilities, programs and activities"?

MR. HANNON: Will you identify which warden you are speaking of?

THE COURT: Yes, Mr. Hannon, I think that is quite appropriate.

MR. CALIFANO: Yes.

BY MR. CALIFANO:

Q Take the warden at Lewisburg first.

A Yes. Warden Alldredge at Lewisburg said that his interpretation was that members of the press may hold conversation with inmates whose identity is not to be made public, if it is limited to the discussion of institutional facilities, programs and activities.

He said by that he meant the ongoing programs for the inmate population. It did not include strikes and things of [20] that sort. That these conversations would be casual ones, that I was free to walk around the institution with an escort, and if I ran across inmates and they wished to speak to me, I could speak to them in the presence of a staff member. But these were not to be prolonged and they would be about the activities. Activities, he interpreted to be educational and recreational activities.

Q Would you explain or tell the Court how the warden at Danbury interpreted those words?

A He interpreted it essentially the same way.

Q Mr. Bagdikian, you have mentioned at the beginning your experiences as a reporter. Would you tell us why you consider this news story still newsworthy?

A Well, because we have had an extraordinary occasion in a period when we have had some bloody and tragic prison rebellions, we have had two massive peaceful strikes in Federal prisons. We have had elected representatives of the prisoners, elected at the behest and encouragement of the prison administration, promised

that they could negotiate without reprisals, as long as they didn't conduct any illegal activity. We don't know what has happened.

THE COURT: Mr. Bagdikian, have any members of the negotiating committee at either of these institutions written you asking that you come and interview them?

THE WITNESS: Legal counsel for them have.

[21] THE COURT: No, that wasn't my question.

THE WITNESS: No, they have not.

THE COURT: In other words, there are no members of these committees that have asked for an interview with you?

THE WITNESS: No, Your Honor.

THE COURT: You say their lawyers have?

THE WITNESS: They have.

THE COURT: For some or all?

THE WITNESS: Well, they spoke for their clients but said it was the lawyers' information that groups of these committees would like to be interviewed.

I did receive a letter from—I am sorry.

THE COURT: Your letter is in the file, but that man is not on the negotiating committee, I take it, the letter that is in the jacket?

THE WITNESS: If I could examine the jacket, Your Honor.

I am sorry, I was mistaken. I did receive a letter from a man who is—

THE COURT: Is he a member?

THE WITNESS: Yes.

THE COURT: I am familiar with that letter. That was attached to your papers.

THE WITNESS: I am sorry, I was wrong.

THE COURT: Is that the only instance?

[22] THE WITNESS: I received some letters which were not signed. The implication of the letters was that they were on the committee and were being punished, but they were not signed.

I was also told in this group interview at Lewisburg that they believed that men in segregation did not have their mail privileges.

One man entered this room when he found out that we were having a group interview, one that was not selected but happened to be in the area; and he said he had written me a letter but I had not received it; that he had been punished but he had not been a member of the original committee.

BY MR. CALIFANO:

Q Mr. Bagdikian, in your judgment as a reporter of 25 years and an editor, in view of the studies you have made of the press, what is your judgment of the adequacy of the mail system currently in effect at the Bureau of Prisons, in terms of correspondence between reporters and prisoners?

A I think it is only slightly better than nothing and extremely inadequate.

Q Why?

A Because, first of all, apparently many prisoners do not believe that these letters are unread by the staff. There is a serious delay in time, especially when there is a matter of crisis in the prison, between the writing of the letter and receipt of it. If the prisoner makes allegations [23] in the letter, the only recourse open to me now is to write back to him and ask him about those allegations. My letter back to him is read by the prison authorities; and he knows that. The only way I can pursue allegations he makes is to disclose to the authorities what he has written to me in the first place. And in the passage of time, of course, the events may far outrun what may have been in the letters.

At the same time, in my experience as a newspaperman, nothing substitutes for face-to-face interview, in which you can study the demeanor of the man, pursue questions at once, watch reaction to things, confront him with things which seem to be internally inconsistent. A letter which is uncensored one way and censored the other way is an unsatisfactory way to do that, especially in the matter of urgent newsworthy episodes.

Q Mr. Bagdikian, what is your judgment of the value of group interviews of prisoners?

A My experience has been that they are of very limited value.

Q Why?

A For the reasons given by the prisoners at Lewisburg, plus the fact that in a group, the most forceful and articulate person may dominate, both by his being articulate and talking the loudest and most, and also by the psychological domination of others, and his fear that others may report or misinterpret what he says or that he may put himself in jeopardy because of [24] what he says from other inmates.

Q What is your judgment of the value of interviews in the presence of prison officials?

A I think the same way. Obviously, a prison official has almost total control over the life of his prisoner and he knows it. It would take an extraordinary prisoner who would say candid things, derogatory things about the men who control how long he would stay and under what conditions.

Q What is your judgment about the value of use or non-use of names in the Bureau of Prisons regulation in that respect?

A I think it should be up to the prisoner. In general, it is a much better practice to attach a man's name, first of all, so he will take responsibility for what he says, so the reader will have some way to judge that a man is taking responsibility for what he says; and then, if he knows his name is there, he is more apt to be careful and truthful and similarly more credible. But I think it should be up to him because he is in very special circumstances.

Q Mr. Bagdikian, what is your judgment, again in view of your experience, and if you have any with respect to the particular story in the prisons to which you wish to go, as to whether or not there will be a deluge of reporters or to what extent other reporters will be imposed upon the prison authorities?

A Well, I do know what the two wardens told me: That [25] after word got out that there was this extraordinary stoppage—

MR. HANNON: Just a moment. I object. He was asked a question and he is not answering the question.

THE COURT: Yes. I don't think what they told you is the test. What is your opinion, is what you are being asked, in terms of your own experience generally as a prison reporter.

THE WITNESS: I think there might be some newspapermen or news media people who would present themselves at prisons in the beginning, but I think this would fall off very quickly and there would be very few.

BY MR. CALIFANO:

Q Did the wardens at Danbury and Lewisburg tell you anything about visits by press or requests by the press for access to those prisoners?

A They did.

Q What did they say?

A They said that after word of the strike got out at both places, not a single newsman presented himself to the prison to ask about it; and that, in fact, at Lewisburg, after the strike had been on for some time, the warden invited a local editor in Milton, Pennsylvania, to visit the prison with a photographer, to show the prison was in good order; which, apparently he did; but he had to come by invitation.

Other than that, no newsmen physically presented themselves at the prison and the prison officials transmitted their [26] press releases by telephone and otherwise to the press.

Q Mr. Bagdikian, roughly, how many prisons did you visit when you were doing the series for the Washington Post?

A I would say a dozen or two. I visited a system and visited a large number of facilities in one system.

Q Was there any disruption at any of those prisons after you left?

A Not that I know of.

MR. CALIFANO: I think that is all, Your Honor.

CROSS-EXAMINATION

BY MR. HANNON:

Q Mr. Bagdikian, I am interested in this forceful in-

mate that you reflect so much apprehension of, that you would encounter in a group interview.

Would you tell me something more about him, please?

A In my experience as a newspaperman—

Q In prisons?

A Everywhere.

Q Well, let's—

A Excuse me, sir. I was speaking not just of prisons. I was speaking of group interviews in general, which I thought was the question.

Q Perhaps we will get to that in a minute. But I want you to tell me about the forceful inmate that you fear will dominate a group interview that you would be conducting in a [27] penal institution, please.

A Well, as I said, in prisons, as in any place in a group, a single person with a forceful personality may dominate the group and inhibit a free exchange of ideas from other members of the group.

Q Would you be the one that would be conducting the interview under this circumstance?

A I am sorry, I don't understand.

Q Are you talking about a group interview that you might be conducting?

THE COURT: He doesn't want a group interview, for that reason, is what he says.

MR. HANNON: I understand that.

THE COURT: Then I don't understand your question.

MR. HANNON: I want to ascertain that he is the one that is present while the group interview is being conducted.

BY MR. HANNON:

Q Is that what you are saying, that you are apprehensive of group interviews that you might be conducting by virtue of the fact that some forceful inmate would dominate the interview? Is that correct?

A Well, yes, I would have that in mind if I did conduct such a group interview.

Q Would you have it in mind as well that you would be incapable of controlling the interview that you are conducting [28] with the group?

A I don't know what you mean by control.

Q Well, are you telling us that you, as a newspaper reporter, would lack the ability to control the group interview so that in fact a particular inmate would dominate the group?

A Well, I suppose—I have to speculate. I suppose I would do what—

Q I don't want you to speculate, Mr. Bagdikian. I want your best judgment, please.

A I wonder if I could hear that question again?

THE COURT: It is an absolutely meaningless question to me, Mr. Hannon.

MR. HANNON: Your Honor—

THE COURT: Because this gentleman has said that he doesn't want a group interview. So I don't understand what the thrust of the question is and I, myself, don't understand the question.

Perhaps you should rephrase it.

MR. HANNON: I merely want to elicit from him his judgment respecting whether or not he could control the group interview to prevent a single inmate from dominating the interview.

THE COURT: Oh.

MR. HANNON: That is all I am asking.

THE COURT: That was not clear to the Court from your [29] question.

The question, Mr. Bagdikian, is, where there is such a dominant person, do you feel you can prevent him from dominating the interview?

Is that the question?

MR. HANNON: Yes, sir.

THE WITNESS: I can ask him to be quiet and I can ask the others to speak up. But he can continue to speak, and the force of his personality might have an effect on others, other prisoners who are present; and I recognize that.

I can control it to the extent that I can tell him that I don't wish to hear any more from him and I would like to hear from somebody else.

BY MR. HANNON:

Q You did conduct a group interview at Lewisburg, did you not?

A I did.

Q Is that the only group interview you have conducted in a penal institution?

A It is not.

Q How many have you conducted in penal institutions?

A Several.

Q In what penal institutions and when?

A I can't give you precise dates, but I have conducted group interviews in the prison for aged and chronic prisoners [30] in South Carolina. I have conducted them in about four different work release centers in South Carolina.

Q Work release centers?

A Yes, part of the penal system.

Q Is that a halfway house?

A No, it is a work release center in which men are dormitoried under supervision in a local facility and work during the day outside the facility.

I have conducted group interviews in California prisons in Stockton. I have conducted group interviews at Alderson; I have conducted group interviews in Pennsylvania.

Q In the group interview you conducted at Lewisburg, was that dominated by any particular prisoner?

A There was one prisoner who was more articulate and eager to speak than others.

Q Would you answer my question, Mr. Bagdikian?

A Well, if you mean by dominated that he had control of the other prisoners, that I was unable to elicit responses from the others, that is not true, but—

Q All right, thank you.

A —but in terms of the time taken and the quickness to speak, and his relative articulateness, yes.

Q At these other institutions that you conducted group interviews, were any one of those dominated by any one particular inmate?

[31] A Yes, that generally was the case.

Q In which one, please?

A There was one in a cottage, a dormitory at Alderson. Well, I must say in practically every one there were some prisoners, as in all group interviews of all kinds I have ever conducted, who were quicker to speak than others.

In some of those institutions, after I had had the group interview, I then asked for private interviews with the more silent members who might feel freer to speak because they were less articulate, less educated than the people who spoke loudly and more readily.

Q You and I can agree, can we not, Mr. Bagdikian, in any penal institution we are going to find forceful, dynamic personalities that will attempt to dominate group interviews, if they are present?

A In any human group and also in penal institutions, yes.

Q Now, Mr. Bagdikian, what impact if any, in your judgment, would an inter-face interview conducted by you, that is to say, an interview conducted by you with such a prisoner have on the prison population in the event that after you had interviewed him and published your story, he is identified as the particular prisoner interviewed and as the one that gave you the story?

What impact would that, in your judgment, have on the [32] rest of the prison population?

A You mean if I published an interview with him and used his name?

Q Yes.

A I think it would depend on the circumstances of who the person was and what he said and what the circumstances in the institution were.

THE COURT: Of course, the question is broader than that, because even if you didn't use his name, if you came to a prison for an interview, everybody in the prison would know before you left that you were there interviewing.

THE WITNESS: I am sure that is the case.

THE COURT: Certainly everyone's experience is that the rumor market and word-of-mouth transfer of information among prisoners is very complete and very prompt. Isn't it, Mr. Bagdikian?

THE WITNESS: Yes, it is.

THE COURT: So even if you didn't publish his name, people would know that an individual interviewed had given you certain information.

You say then the effect would depend on what you wrote?

THE WITNESS: Yes, sir, and what the prisoner said and what he was talking about in terms of the context of the prison.

[33] MR. HANNON: Is Your Honor through?

THE COURT: Yes.

BY MR. HANNON:

Q Would it, in your judgment, Mr. Bagdikian, tend to inflate his importance over the relative importance of all other inmates in the institution?

A No more so than an interview with anybody else under any other circumstances.

Q Well, all right, I will accept that. Would an interview with any prisoner tend to inflate the importance of that prisoner in a penal institution over the relative importance of all other prisoners?

I will accept the thesis, yes.

Answer the question, if you will, please.

A Well, I am thinking of your phrase, sir, "inflate the importance." I can't say that it would inflate his importance. It might deflate his importance. There are people who get word out of prison one way or another. He can write me a letter and tell me to use his name and make unconfirmed and unquestioned allegations. It certainly would identify him as someone who has been interviewed and reported in the press. Whether that inflated his importance, I think would depend on the circumstances.

Q Well, a letter-writing exchange between you and he would not be the same, would it, in degree of importance, as [34] an actual interview by you of the prisoner within the penal institution?

Are you saying that it is the same?

A No, but I am saying that if the question is whether or not it would inflate the importance—well, if the reputation of this inmate would be better known as someone who has communicated with the outside, yes, that is true.

THE COURT: Mr. Bagdikian, what is being asked is, will not your interviews create Big Wheels in the penitentiary? That is what Mr. Hannon is asking you.

It is all through the papers, it is all through the literature about this problem. There is a concern that you can inflate the importance or ego or position of an individual prisoner to a point that his becoming a Big Wheel interferes with the general discipline in the institution.

Do you dispute that?

THE WITNESS: No, I don't think there is any question it would have an element of that, along with other ways prisoners make Big Wheels of themselves. I don't doubt at all in that case that would be true, that is a possibility.

BY MR. HANNON:

Q You recognize also as something more than a possibility that other prisoners would tend to look to him as a figurehead image and spokesman of the institution?

A Not necessarily, because—well, not necessarily.

[35] **Q** Do you believe that the effect of an interview by you with a prisoner that is published in the newspaper—

Excuse me, if I may interrupt.

When you were at Lewisburg and you were at Danbury, are you aware of the fact that the prisoners at both of those institutions have free and total access to whatever newspapers they wish?

A I wasn't aware that they had total and free access to any newspaper that they wished; but I am aware they can get some newspapers.

Q You are fully aware of the fact that the Washington Post can be sent into both Danbury and Lewisburg, are you not?

A Yes, I am.

Q Are you aware of the fact that it is sent into Danbury and Lewisburg?

A I have no reason to believe that it is not.

Q Are you aware of the fact that they have free access to television?

A I am.

Q And news on television?

A I am.

Q Do you know, Mr. Bagdikian, whether or not any of the prisoners at Danbury or at Lewisburg have had occasion to read your columns in the Washington Post since you started writing about these two institutions?

[36] A Yes, I do.

Q And what is the answer?

A The answer to what?

Q Have they read your columns at either of these institutions?

A I have reason to believe that some of them have.

Q From what you heard?

A From what some of them told me.

Q Now, Mr. Bagdikian, do you know the warden at Lewisburg?

A Yes, I do.

Q Is he present in the courtroom this morning?

A Yes, he is.

Q What is his name, please?

A Noah Alldredge.

Q Do you know the warden at Danbury as well?

A Yes, I do.

Q Is he present?

A Yes, he is.

Q What is his name?

A Warden Norton.

Q Tell us about your visit to Lewisburg, your first visit to Lewisburg in connection with the work stoppage or strike that you speak of, Mr. Bagdikian?

A Well, I arrived at the institution in the late morning [37] and was ushered into the warden's office, who was very gracious, especially since he was having, apparently, inspection visitation from the Federal Bureau at the same time.

Q That is Mr. Alldredge you are speaking of?

A Mr. Alldredge, I am speaking of. He made himself available, and the associate warden, Mr. Cansler, and John Kilkeary, who, among other things, serves as public relations for the prison, and we discussed the regulations. We discussed—

Q Did you ask for something prior to the time that you got into a discussion of the regulations?

A Oh, yes, I asked to see the members of the negotiating committee.

Q Who did you ask that of?

A The warden.

Q And what did he say?

A He said that that was not permitted.

Q Did he tell you where they were?

A I asked him how many of them were in segregation.

Q Did he answer that question?

A He did.

Q How many were there, did he tell you, who were in segregation?

A My recollection is that at that time there were eleven.

Q Eleven in segregation. You wanted to see and talk to these eleven?

[38] A I did.

Q Well, is that what you really wanted, to see and talk to them, or did you want to interview each of the eleven?

A I wanted to interview each of the members of the negotiating committee, including those who were in segregation.

THE COURT: Separately, I take it.

THE WITNESS: Separately, yes.

BY MR. HANNON:

Q So that you did not merely want to talk to them, you wanted to interview them; is that right?

A Well, yes, yes, I wanted to interview them.

Q Now, what Warden Alldredge told you was you could not be allowed to interview these prisoners; is that what he told you?

A I could not interview them privately and individually.

Q Now, did he offer you an alternative?

A He did.

Q Tell the Court, if you will, please, what was the alternative that Mr. Alldredge offered you?

A He offered two alternatives: The random selection which I have described previously.

Q That would be selecting prisoner cards at random?

A Right.

Q And if two of the cards happened to be members of the negotiating committee that were in segregation, then they would [39] have been presented to you?

A That is right.

Q And if not, then you would not have been able to talk to them?

A Right.

Q Now, is this the—

A Of course—

THE COURT: What was the other alternative?

THE WITNESS: The other alternative was he would let me walk through segregation and talk to prisoners there.

BY MR. HANNON:

Q Just segregation?

A Yes. Oh, no, he offered me the opportunity, as a matter of fact urged very strongly that I inspect the total institution and particular places in the institution which he thought I ought to see in connection with my visit.

Q Have you ever inspected or toured Lewisburg?

A I have inspected parts of it, toured parts of it.

Q When was that, prior to the strike business?

A That is right, right.

Q And so at the occasion that you are up there talking to Warden Alldredge about the work stoppage, you had seen part of the institution?

A Oh, there were many parts I had not seen.

Q Yes. What did Warden Alldredge tell you as an [40] alternative, which is what Judge Gesell asked?

A The second alternative was I could inspect segregation and talk conversationally with people in segregation but not in private and not individually.

Q Did he say that you couldn't talk to them in private?

A That is right. I could not speak to them by myself

without a staff member being present, without other prisoners being aware, being within hearing of these prisoners.

Q Now, you don't have any doubt but that he insisted that a staff member be present while you were talking to them?

A I don't have a doubt that he said I could not interview them privately and without the presence of others.

Q No, sir. I want to know whether at the time Warden Alldredge said that you could go to segregation and that you could talk to prisoners in segregation, in the event that you agreed to that, did he insist that an official of the institution be with you and listen to the conversations? Did he?

A He did not put it in those words. I asked him if I went to segregation, might I interview any men in segregation privately and individually; and he said, no.

Q All right. So we are clear on that, Mr. Bagdikian, what you cannot do and what Mr. Alldredge told you that you could not do was that you could not go to segregation and conduct interviews with men in segregation.

I now ask you, sir, is it not a fact that Mr. Alldredge [41] told you that you could go to segregation, you could carry on conversations with the prisoners in segregation; and is it not a fact, as well, that he did not say that an official of the institution had to be present so as to listen to these conversations?

A Well, my question to him was not that, sir.

Q Well, my question to you, Mr. Bagdikian, is whether or not the warden offered this to you? Did he, sir?

A He said: I will let you go down to segregation and talk to the prisoners.

And I said: May I speak to them individually, in private, without anyone else being present?

And he said: No.

THE COURT: You didn't explore whether you could talk to them as a group in private? You did not explore whether you could talk to them as a group in private?

THE WITNESS: I did not, sir. I rejected the opportunity to talk to them as a group.

BY MR. HANNON:

Q So you had an opportunity, did you not, Mr. Bagdikian, to talk to the prisoners in segregation and you rejected this?

A Under the terms that were laid down to me.

Q Because you are standing on a principle?

A Because I wanted the candid word of individual prisoners without their fear of being overheard by anybody.

[42] Q You rejected it, Mr. Bagdikian, did you not, because you felt that you were entitled to interview each one of these men in segregation and to report what they said and to use their names in reporting what they said, if they agreed to it?

A No, I rejected it because what I needed to do to get reliable information was to speak to a man in private when he was not being overheard by anyone else, including another inmate.

THE COURT: Then it is quite clear that the allegation of your counsel about a news blackout is not so; isn't that right?

THE WITNESS: [Illegible] until the time the warden—

THE COURT: The papers are full of statements of news blackout. It is just a blackout of the kind of news gathering that you prefer.

THE WITNESS: Yes, sir, plus a blackout, at the time that that was written, on the apparent causes of the strike, because steadily what the Bureau said, during the days and weeks of my inquiry of them as to the causes of the strike, is that they had no idea. So, to that extent, there was a blackout.

THE COURT: That, it also appears to me, Mr. Hannon—and I want to be sure I am not mistaken about this—that this post filing arrangement that was suggested at Lewisburg is inconsistent with the policy; or is it consistent with the policy?

MR. HANNON: I don't understand what Your Honor means by the post filing arrangement?

THE COURT: This interview we are talking about took [43] place after this suit was filed; and what I am

asking is this: He went back to Lewisburg after the suit was filed, and at that time, as I understand it from where we are now, the warden said to this gentleman: You may talk to a group of segregated prisoners without any official present and you may talk to them as a group.

MR. HANNON: That is it.

THE COURT: Now, is it the Government's position that that is consistent or inconsistent with the policy?

MR. HANNON: It is—

THE COURT: If I may, for a moment, Mr. Hannon. That is directed to a matter that came up and was not resolved at the last hearing as to what was meant by the portion of the policy relating to conversations.

MR. HANNON: It is consistent with the policy; it has been consistent with the policy since 1966.

I want to make it perfectly plain to Your Honor, so there will be no misunderstanding about it, what Mr. Bagdikian was offered was that he could go to segregation and he could converse with the prisoners in segregation. Now, I am not representing to the Court that anybody was going to take them out of their cells where they were in segregation.

THE COURT: I understand. That is unimportant.

MR. HANNON: He could go and talk to each one of them, if Your Honor please, and he could have conversed with them up [44] to some five to ten minutes.

MR. CALIFANO: I think counsel is testifying. He has a warden that can take the stand.

THE COURT: It is my fault but I wanted to follow the testimony. I am sure Mr. Hannon will come forward with testimony.

I am trying to have an understanding of the sentence in 6:

"However, conversations may be permitted with inmates whose identity is not to be made public if it is limited to the discussion of institutional facilities, programs and activities."

I may interpret that, Mr. Hannon, from what you say, as meaning conversations may be permitted with inmates without supervision by correctional authorities?

MR. HANNON: Without equivocation, Your Honor, yes.

THE COURT: That is what I wanted to get clear.

MR. HANNON: Yes, Your Honor, that is true.

THE COURT: Very well, thank you.

Excuse me for the interruption.

MR. HANNON: I have two wardens—

THE COURT: I imagine that will come along in testimony but I simply wanted to be in focus as to your position. Thank you.

[45] BY MR. HANNON:

Q Mr. Bagdikian, after you left Lewisburg without success in your quest for interviews of those in segregation, you went to Danbury, did you not?

A I did.

Q Now, did you phone Warden Norton at Danbury before you went up there?

A I did.

Q Did you tell him on the telephone why you were coming?

A I did.

Q Now, tell His Honor, if you will please, the dialogue, the conversation that you had with Warden Norton before you went to Danbury?

A Originally I had informed the Bureau here in Washington—

Q Excuse me. I want you to tell us about the telephone conversation that you had—

THE COURT: The conversation with the warden.

THE WITNESS: Yes. I called the warden late on, I believe it was Monday, after the hearing, to inform him that while the Bureau had been told that another reporter would visit his institution the following day, that the plan had been changed and that I would visit the institution the day after, so he would know of the change of plans. And I told him why I would like to come up.

[46] BY MR. HANNON:

Q What did you tell him, please?

A I said I wanted to come up and interview members of the elected negotiating committee of prisoners.

Q What did he tell you?

A He said he hoped I would tour the institution and see the whole thing, that I had never been there and that I ought to do that.

I said that was not the purpose of my visit.

Q And did you reiterate the purpose of your visit?

A Yes.

Q To interview those men in segregation?

A No, not necessarily in segregation, but the men who were on the negotiating committee.

Q Did Warden Norton tell you that you would not be allowed to interview these prisoners?

A He did, but I told him that there seemed to be some confusion in the regulation as between the conversation and an interview and between what an activity was inside an institution, and I was interested in holding conversations about the fate of the negotiating committee in that activity which was the strike.

Q Now, nobody told you, did they, Mr. Bagdikian, that you could not converse with these prisoners respecting the strike or the work stoppage? Neither Warden Alldredge nor [47] Warden Norton ever told you that, did they, sir?

A When I asked them for the interpretation of that sentence in Section 6, they told me, and then I repeated this in each case, to make sure I had it straight. I said: What do you mean by a conversation about activities?

And they said, in both cases, essentially this: That you may tour the prison with an escort, and any prisoner you see as you walk around at random, who wishes to speak to you, you may speak to and you may chat with—I believe it was Warden Norton saying “chat”—meaning three or four questions.

I said: What do you mean by activities?

They said: The recreation and education programs within the prison.

I said: Does that mean the strike and punishments?

And they said: No.

Q They told you that you could not talk about the strike?

A They said that their interpretation of "activities" did not include that.

THE COURT: But they were not confining their permission to you to the policy. Certainly at Lewisburg there was no limitation on your talking with the group in segregation about the strike, was there?

THE WITNESS: There was not. The warden said he was making an exception to the rules, he was going beyond the rules in this case.

[48] THE COURT: Did they agree to go beyond the rules also at Danbury?

THE WITNESS: He did. He said he would offer me the same thing that Warden Alldredge had.

BY MR. HANNON:

Q But is it your testimony, Mr. Bagdikian, that Warden Alldredge and Warden Norton told you that when you toured the institution, when you conversed with prisoners, that you could not talk to these inmates about the strike? Is that your testimony, sir?

A No. They said that their interpretation of that regulation was that talk about activities meant talking about the ongoing programs of the institution.

When, in fact, I did tour, walk through the institution and did stop a prisoner at random, I did in fact talk about the strike; and they did not stop me.

Q Well then, you haven't answered my question, Mr. Bagdikian, I don't think; and I want you to answer it, sir.

I had understood you to testify here this morning that Warden Norton and Warden Alldredge told you that you could not talk to inmates about the strike. Now, did they or did they not?

A They told me I could not talk, I could not interview the members of the negotiating committee about anything.

Q All right, Mr. Bagdikian. I pass that for the moment.

[49] Now, you had a telephone conversation with Warden Norton before you went to Danbury?

A I did.

Q Was there any doubt in your mind, after you concluded that telephone conversation, respecting what privileges would be accorded to you by Warden Norton when you reached Danbury?

A Not from his literal words.

Q But you went to Danbury anyway, sir, did you not?

A Yes, I did.

Q Will you tell us why you went to Danbury anyway?

A Because I had gone to Lewisburg being told that it would be forbidden to interview members of the inmate committee and that it wouldn't be possible to have private interviews, but in fact I had been offered a group interview, which turned out to be unproductive. But it was different and I hoped in Danbury maybe in the meantime there would be a similar departure from the regulation and permit me to speak to the members of the committee who had been elected to negotiate the strike.

Q Did Warden Norton tell you on the telephone that you could have a group interview at Danbury if you came?

A No, he did not, not to the best of my recollection.

Q He did tell you that when you reached Danbury?

A After I told him my experience at Lewisburg, he said he would offer me the same thing.

Q Did you accept it?

[50] A I did not.

Q You left without taking advantage of the group interview?

A That is right.

Q How many prisoners are there at Danbury?

A I think that day there were something like 730.

Q Projectionwise, the possibility of your meeting one of the negotiating team in the group interview would be greater at Danbury than it would have been at Lewisburg; would it not?

A Not necessarily, because—let me think of the mathematics. There were, as I recall—

THE COURT: Fifteen is a greater percentage of a lower number.

THE WITNESS: But they had a different number of members of the committee. But it was a very small statistical method and it seemed to me a strange way to go about getting at the facts when you knew the sources of the facts. And the odds were very small. And the group interview was very unproductive of the individual ten at Lewisburg.

Q When you talked to the group at Lewisburg, Mr. Bagdikian, there was no official of the institution present, was there?

A There was none. They were visible through a big window in the door, but they were not in the room.

Q Did you talk to those prisoners about the strike?

[51] **A** I did.

Q Were they informative?

A They gave their impressions and some individual experiences.

Q Now, did they tell you that under the new policy they didn't believe that their letters to the press were being sent out of the institution uncensored?

A Six of them said that. Six of them said they believed that they were not sent out uncensored.

Q Now, you have no knowledge, no personal knowledge that the letters are in fact censored before they are transmitted out of the institutions, do you, Mr. Bagdikian?

A No, I do not.

THE COURT: What I don't understand, Mr. Bagdikian, is this: You are a newspaperman and you had these interviews. Why didn't you publish?

THE WITNESS: I did, sir.

THE COURT: You published what the Danbury people told you?

THE WITNESS: I had an individual interview with a random prisoner I ran across in the yard, but it was not productive of anything newsworthy.

THE COURT: Did you publish the group interview at Danbury?

THE WITNESS: I did not have one at Danbury, sir.

[52] **THE COURT:** Did you publish the group interview at Lewisburg?

THE WITNESS: I published an account of that. I published that I had such an interview and what seemed to be the salient points that came out of that but none of them, of course, relating to the fate and punishment of the inmate negotiating committee.

BY MR. HANNON:

Q This was uppermost on your mind, was it not, Mr. Bagdikian, the fate and the punishment?

A The method of resolution of the strike, yes.

Q Uppermost on your mind?

A Yes.

Q Well, when you got to Danbury, did Warden Norton say to you—

Excuse me.

He did tell you on the telephone: I encourage you to come and I encourage you to tour Danbury. You haven't been here before. Did he tell you that?

A He did.

Q When you got to Danbury, did he again say to you: Mr. Bagdikian, we encourage you to tour Danbury; we want you to see it.

A He did.

Q Did he tell you, Mr. Bagdikian, that if you toured [53] Danbury, that you could converse with prisoners as you conducted your tour?

A Under certain conditions.

Q Under what conditions, sir?

A I asked him—

He said, if I toured the institution and I came across a prisoner at random, that I could chat with him.

I said: What do you mean by chat?

He said: Well, you know, nothing in depth, three or four questions.

I said: If I ask him about the strike, or anything else, and my escort is standing nearby, and I ask the escort to stand aside where he can't hear, or if I ask the prisoner to come to one side where the escort can't hear, will that be permitted?

And he said: Well, we don't want to be unreasonable but that is against the rules.

Q He said that he wanted an official with you listening to whatever conversations you conducted?

A No, he said what I just testified to, sir.

Q I paraphrased it.

A No. I want to stress that he was not unfriendly but he was trying to do what he felt he could under the rules.

Q Did he tell you you could go to segregation and talk to the prisoners that were in segregation?

[54] A I don't recall that he did not. But he said, he offered me a tour of the entire institution and I assumed that included segregation.

Q Did you understand, Mr. Bagdikian, since you were getting a complete tour of the institution, that you would have been able to converse with prisoners that were in segregation that were on the negotiating committee that you referred to?

A Not in private and not out of the hearing of an official escort.

Q So that you knew you could converse with them but you were under the impression any conversation you had with them would be only in the presence of an official of Danbury?

A And only a few questions and not carried in depth.

Q You have no doubt about the fact that Warden Norton said any conversations you had with them must be in the presence of a prison official?

A I asked him what would happen if I asked the prison official to stand out of hearing; and he said that would not be possible.

Q The Government would what?

A That that would not be possible. Because, in fact, we did run across such a prisoner, and I did attempt to hold such a conversation; and after I came back, I asked both the Associate Warden, who was with me at the time, the escort, and the Warden, after we returned to the Warden's office, what [55] would have happened if I asked the Associate Warden, my escort, to stand aside and permit me to interview this prisoner that I found at random at some length; and they told me that would not be permitted.

Q Well, is there a difference between your understanding respecting the manner in which you could conduct conversations with prisoners at Lewisburg and the manner in which you could conduct conversations with prisoners at Danbury?

A Not substantially.

Q Isn't it clear in your mind—

THE COURT: There is a clear difference in the testimony. We are really just spinning our wheels now. There is a clear difference in the testimony that there was a somewhat different position taken at the two institutions. Slight, but a somewhat different position.

BY MR. HANNON:

Q Now, Mr. Bagdikian, has, in fact, a member of the so-called negotiating team of either one of these two institutions written to you and asked you to come up and interview them?

A One member of the negotiating committee at Lewisburg wrote and said he felt he was in jeopardy.

Q But he didn't ask you to come up and interview him, did he, Mr. Bagdikian?

A He said he wanted me to do something about it.

[56] Q Have you got the letter, please?

THE COURT: It is in the record.

THE WITNESS: And I was reached by lawyers who represented themselves as representing members of the inmates who asked me to interview them.

BY MR. HANNON:

Q Did you—

A And I wished, as a newspaperman, to interview them or at least to find out if they would consent to interview.

Q Did you tell the lawyers to request their clients to write to you?

A I did not.

MR. HANNON: May I have Your Honor's indulgence, please.

I have no further questions. Thank you.

THE COURT: Do you have any questions?

MR. CALIFANO: Just a couple, Your Honor.

REDIRECT EXAMINATION

BY MR. CALIFANO:

Q Mr. Bagdikian, you stated on cross-examination that you had an interest in the fate of these strike leaders.

Did you have other interests about this story?

A Yes, sir.

Q Could you indicate what those interests were?

A Yes. There were some claims that I received in mail and otherwise that some men at Lewisburg had been clubbed and [57] maced in their cells, that prescribed medication had been withheld from strikers, members of the striking committee; and I was interested in inquiring into that.

Q Did you have interest in anything other than strike leaders?

A Well, I was interested in the resolution of this extraordinary event which had been done without bloodshed, with elected representatives of prisoners, and which was so different from places like Attica and San Quentin, that there was obvious public interest to find out how this happened and why it happened and also why there had seemed to be reprisals, contrary to the promise that there would be none.

Q Mr. Bagdikian, would you just state once more, so we all have it clearly, what you were told was meant by a conversation?

THE COURT: Oh, no. I have heard enough about that.

MR. CALIFANO: All right.

THE COURT: He has been over that time and time again.

BY MR. CALIFANO:

Q Mr. Bagdikian, Mr. Hannon asked you, and Judge Gesell, about the Big Wheel complex, in terms of problems relating to personal interviews.

Do you see any difference between the use of a man's name in the Washington Post, as a result of a personal interview, which is prohibited under the regulations, and

the use [58] of a man's name in the Washington Post as a result of a letter he writes you, which is permitted, in terms of its impact on the prison or the press—or the prison, the Big Wheel problem?

A Under the present circumstances, no.

MR. CALIFANO: Your Honor, I don't know whether you want to put this in evidence. This is Mr. Bagdikian's story which he can identify.

MR. HANNON: I can't hear you.

THE COURT: I have no interest in the story.

He wants to know whether there is any point in putting Mr. Bagdikian's story in evidence. I said, not that I see.

MR. CALIFANO: That is all.

THE COURT: Very well, thank you.

MR. HANNON: May I ask two questions, Your Honor?

THE COURT: All right, Mr. Hannon.

RECROSS-EXAMINATION

BY MR. HANNON:

Q Mr. Bagdikian, if you were so concerned respecting whether or not people had been clubbed and mace had been used on them, when the work stoppage was put down at Lewisburg, why didn't you take advantage of the tour that was offered to you so that you could have visited the hospital and encountered any prisoners that may have been clubbed or maced?

A Because I didn't trust group interviews where prisoners were in a condition of some perceived jeopardy to [59] themselves.

Q Then if you were so concerned, Mr. Bagdikian, respecting whether or not reprisals had been visited upon the so-called negotiating team, why did you not take advantage of going to segregation to converse with these prisoners, even if an official of the institution was going to be present?

A Because I had already satisfied myself that they had been punished and had the warden's version of why

they had been punished; and for the same reason, that in a group, there is a feeling of jeopardy, what they would say as overhead by other inmates who are not connected with them.

Q In your conversations with both Warden Alldredge and Warden Norton, they held nothing back from you, did they, Mr. Bagdikian?

A They spoke freely, and I asked them about these questions.

Q Did you at Lewisburg, Mr. Bagdikian, ask Warden Alldredge if you could talk to the medical people of the institution?

A I did not.

Q They would have been in a position to inform you whether or not anybody had been clubbed or maced, would they not, sir?

A Not necessarily.

MR. HANNON: Thank you very much.

[60] THE COURT: Very well. You are excused, Mr. Bagdikian.

(Witness excused.)

THE COURT: Do you have another witness?

MR. CALIFANO: Yes, Your Honor. Mr. Wilson will question him.

MR. WILSON: Benjamin Malcolm, please.

WHEREUPON—

BENJAMIN MALCOLM

was called as a witness by the Plaintiff, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WILSON:

Q Sir, would you state your name and address for the record, please.

A Benjamin Malcolm, 114-65 177th Street, Saint Albans, New York. M-A-L-C-O-L-M.

Q Mr. Malcolm, where are you employed and what position do you hold?

A I am the Commissioner for the New York City Department of Correction, in New York City, New York.

Q Does that position make you the chief executive officer of that department, sir?

A It does.

Q Have you held any other positions with the Department of Correction in New York City?

[61] A Yes, I was the Deputy Commissioner prior to this appointment.

Q When were you appointed Commissioner?

A January 19, 1972.

Q How long did you serve as Deputy Commissioner?

A Since December 14, 1970.

Q Did you have any previous experience in corrections work?

A Yes. I started in 1948 as a parole officer in New York City and went up through the ranks over a period of 19 years to a position of Deputy Chief Parole Officer in New York City.

Q Mr. Malcolm, would you describe for me the facilities that you have under your jurisdiction?

A Yes. The Department of Correction supervises fourteen different facilities, nine major facilities comprised of detention facilities, as well as sentence facilities. It is comprised of the Manhattan House of Detention, Bronx House of Detention, Brooklyn House of Detention, the Queens House of Detention, the Queens Annex House of Detention, the Adolescent Remand Shelter, on Rikers Island, the Adult Remand Shelter on Rikers Island, the New York City Correctional Institution for Women, which is comprised of both detainees and sentence females, New York City Correctional Institution for Men on Rikers Island. Also comprised of three prison wards and two residential [62] facilities, for a total of fourteen.

Q The Manhattan Hall of Detention that you mentioned, is that popularly known as The Tombs?

A Yes, it is.

Q What is the average daily population of your facilities?

A Total, 11,500.

Q During the course of a year, how many individuals would be processed through your facilities?

A Approximately 110,000.

Q What types of prisoners do you house in the facilities you have described?

A We have detainees—

THE COURT: Why don't you move ahead with what you want to bring out with this man. I have a general knowledge of corrections. I imagine he has almost every kind of problem known to man.

MR. WILSON: Yes, Your Honor.

THE WITNESS: That is correct, Your Honor.

THE COURT: All right. Now what is it you want to bring out from this gentleman?

MR. WILSON: I wish to mark some documents for identification, Your Honor.

Mark this Plaintiffs' Exhibit No. 1, for identification.

Number 2, for identification.

Number 3, for identification.

[63] THE DEPUTY CLERK: Plaintiffs' Exhibits 1 through 3 marked for identification.

(Whereupon, amendment to rules and regulations dated January 4, 1972 was marked Plaintiffs' Exhibit No. 1, for identification.)

(Whereupon, guidelines for identifying members of the news media was marked Plaintiffs' Exhibit No. 2 for identification.)

(Whereupon, amendment to rules and regulations was marked Plaintiffs' Exhibit No. 3, for identification.)

(Whereupon, the documents were shown to Defendants' counsel.)

MR. HANNON: Do you have extra copies? Could you let me have a set.

BY MR. WILSON:

Q Mr. Malcolm, I hand you Plaintiffs' Exhibit No. 1, for identification, and ask you if you can identify it?

A Yes, I can.

Q What is it, sir?

A This is a General Order promulgated by the Department of Correction. It is an amendment to the rules and regulations concerning interviews of detention inmates by accredited [64] reporters.

Q What is the date on that document?

A January 4, 1972.

Q Does this document reflect the current policy of your department with respect to interviews of inmates by accredited reporters?

A Yes, it does.

Q I ask you to look at Plaintiffs' Exhibit No. 2, for identification. Can you identify that document, sir?

A Yes, I can.

Q What does it purport to be?

A This document sets forth the guidelines for the news media, defines "accredited reporters," and sets forth the guidelines that they are to follow.

Q How does that relate to Plaintiffs' Exhibit No. 1, for identification?

A The only distinction between the two is the first document permitted interviews by taking away a regular visit, whether it be the family or not.

Q Excuse me, I don't think you understood my question.

THE COURT: Does the second exhibit implement the first?

THE WITNESS: Yes, it does.

THE COURT: Very well.

[65] BY MR. WILSON:

Q Mr. Malcolm, would you describe the procedures set forth in Plaintiffs' Exhibit No. 1, for identification, concerning interviews with inmates in your facilities?

A Yes.

THE COURT: I can read the document. Do you want to hand me a copy?

MR. WILSON: Yes, sir.

THE COURT: There is no point in his reading the document.

(Whereupon, the documents were submitted to the Court.)

THE COURT: I think these documents are quite self-explanatory. You may have some particularized questions, Counsel, that you may want to ask.

I have read both of them.

MR. WILSON: Yes, Your Honor.

BY MR. WILSON:

Q Mr. Malcolm, Paragraph 1 of Plaintiffs' Exhibit No. 1, for identification, recites that it amends General Orders No. 6, dated April 21, 1971.

Would you tell the Court, please, what General Orders No. 6, dated April 21, 1971, is, please?

A Well, this is a very simple order which permits members of the news media, accredited members, when they make an application to an inmate to request an interview, the inmate [66] notifies the warden of the particular institution, and if he agrees to accept the interview, he must state so in writing and the interview is arranged.

THE COURT: I think the question being asked you is whether this is the first time that interviews were permitted or whether under the prior order, as amended, interviews were permitted?

THE WITNESS: The interviews were started April 21, if that is the question, 1971.

THE COURT: In other words, there was an earlier order back on April 21, 1971?

THE WITNESS: That is right.

THE COURT: And this is a refinement of it?

THE WITNESS: That is right.

THE COURT: I think that is what counsel was asking.

MR. WILSON: Yes, Your Honor.

BY MR. WILSON:

Q What was the policy of your department prior to April 21, 1971?

A We permitted sealed letters to go out with no censorship, and also coming in letters were examined for contraband but not censored.

Q With respect to correspondence with members of the press?

A With anybody.

[67] Q Did your department permit, prior to April 21, 1971 interviews by the press with inmates?

A We did not.

Q Mr. Malcolm, Plaintiffs' Exhibit No. 1, for identification, how does that change General Orders No. 6, dated April 21, 1971?

A Well, this simply permits the interview to take place at a time when it does not take away a visit, a regular visit from the inmate. The prior order said he could have a press interview but it would be considered one of his regular visits.

Q How many visits are inmates permitted?

A Two a week.

Q Two a week. So the prior order would require him to give up a regular visit to see a member of the press?

A That is correct.

Q Is this the only change that Plaintiffs' Exhibit No. 1, for identification, has?

A That is the major change.

MR. WILSON: Your Honor, I wish to offer Plaintiffs' Exhibits 1 and 2, for identification, in evidence.

THE COURT: They may be received.

(Whereupon, Plaintiffs' Exhibits 1 and 2 were received in evidence.)

THE COURT: Mr. Witness, what is meant by "b" on Page 2:

[68] "The head of the institution deems the arrangement to be administratively appropriate."

What do those weasel words mean, in terms of operating the interviews?

THE WITNESS: Where is this, Judge?

THE COURT: This is dated January 4, 1972. It is General Orders No. 2, on the second page of General Orders No. 2:

"The head of the institution deems the arrangement to be administratively appropriate."

What does that mean?

THE WITNESS: It means that during the period of a day, for example, in our counsel room, you may have six or seven attorneys working at one time, and from an administrative point of view, the interview couldn't take place at that particular time. So it gives him some leeway.

THE COURT: In other words, if the interviewing facilities are already clogged up with attorneys, or something else?

THE WITNESS: That is correct. This is a very busy place.

THE COURT: But it is not designed to give the head of the institution or his superiors the opportunity to refuse because of conditions in the particular institution at the time, in terms of riots or strikes?

THE WITNESS: Oh, yes, yes.

[69] THE COURT: Emergency situations?

THE WITNESS: Right, it gives him that opportunity, too.

THE COURT: He could refuse it then?

THE WITNESS: He could refuse it, but the final decision would be made by myself as the Commissioner.

THE COURT: Yes.

THE WITNESS: But he could refuse it.

THE COURT: In other words, if there was a problem with a particular prisoner who had been unruly or disruptive, and he was concerned about the interview, he could also invoke this administrative appropriateness?

THE WITNESS: That is right.

THE COURT: Then that would be reviewed by you?

THE WITNESS: That is correct.

THE COURT: And the Commissioner?

THE WITNESS: I am the Commissioner.

THE COURT: Yes. I was thinking you were a Deputy before that. But not when that was in effect, I guess, is that right?

THE WITNESS: Yes.

THE COURT: Now, have many interviews of the press been refused?

THE WITNESS: Very few.

[70] BY MR. WILSON:

Q Under the policies now in force, Mr. Malcolm, can inmates in your facilities be interviewed in private by members of the press?

A They can.

Q Must a staff member be present?

A No.

Q Can an inmate who agrees to an interview have his name revealed by the press?

A Yes.

Q Are there any limitations imposed by your regulations on the content of an interview?

A There are no regulations. It is a private interview. He can say what he wants to say.

Q Mr. Malcolm, are any changes contemplated in the policy reflected in Plaintiffs' Exhibit No. 1

A Yes.

Q Mr. Malcolm, I show you Plaintiffs' Exhibit No. 3, for identification, and ask you if you can identify it?

A Yes, I can.

Q What does Plaintiffs' Exhibit No. 3, for identification, purport to be?

A This is a General Order that will go into effect on Monday, expanding our facility for interviewing to electronic news media, T.V. camera, the tape recorder, and liberalizing [71] our policy. Also, it widens the discretion that the warden or the commanding officer of the individual institution has. It doesn't confine him to a nine-to-three. If he sees fit to conduct the interview at 6:00 o'clock in the evening, he can do this.

This policy has already been in effect but we are just writing it. We are actually doing this; we have been doing it for at least two or three weeks now, letting the electronic media come in.

Q Under the policy that is reflected in Plaintiffs' Exhibit No. 1, the electronic media were excluded, according to that written policy?

A That is correct. No tape recorders, cameras or devices of that sort.

Q Under that policy there were strict time limitations imposed on when interviews could be conducted?

A They were strict but they were not that strict. They were not confined; we did not hold to the nine-to-three rule.

Q Why were the electronic media initially excluded from your policy of your department?

A We felt it could in some way have an effect on the security, the harmony of the institution; and for that reason we excluded it.

Q Why have you now changed that policy?

[72] A Well, we have had ample time to examine our track record since last April, and we haven't had any problems, and we feel we should move forward into another area.

Q In fact, up to now, there have been instances in which the electronic media have been inside your facilities?

A Yes.

THE COURT: I noticed in the press the other day that in The Tombs you had opened up the prisons to children.

THE WITNESS: That is correct, sir.

THE COURT: I take it generally you have been liberalizing in New York the visiting privileges.

THE WITNESS: That is correct, sir.

THE COURT: With respect to the press, since this policy has been in effect, what aspects of it have been beneficial and what aspects have been detrimental, as you see them, to the operation of the prison system?

THE WITNESS: Well, of course, the credibility, I think, of corrections, I know, in New York State, has been somewhat hampered, somewhat hurt in the last year or so. We felt by liberalizing the policy and letting the press come in and letting the community come in, letting the church come in, letting a whole host of people come in, we would begin to let the public see what we are doing; and we encourage it.

THE COURT: My question to you is—and I see why you have done it—on the basis of your experience so far, [73] have you found that it has advantages, some ad-

vantages and some disadvantages; and could you indicate to the Court both what you found to be the advantages and the disadvantages from what we call this liberalized policy?

THE WITNESS: Yes. We find that it has been advantageous to do this because it begins to tell the public what we are doing, and it begins to erase, eliminate doubts people have had. These are the major advantages that we have had. It also alleviates tensions in our institutions, as far as I can see.

I haven't found it to be disadvantageous. On the 20th of this month, we had Senator Javits and Senator Buckley, followed by 35 or 40 members of the press, and this has been helpful, because we are going to ask them to try to get us some money to do some of the things we need.

THE COURT: In individual facilities, have you had conditions arise that you feel were created by giving the prisoners this access which have in some way impeded or interfered with the correctional process?

THE WITNESS: No.

THE COURT: Do you follow what I am talking about?

THE WITNESS: I understand what you are saying. We haven't found that.

THE COURT: Have you seen any Big Wheels developing because of this?

[74] THE WITNESS: There are some prisoners in our institutions who are considered Big Wheels right along and they have been interviewed; and I don't think the wheel is any bigger now than it was before.

BY MR. WILSON:

Q Mr. Malcolm, Plaintiffs' Exhibit No. 1, which reflects your present policy, deals only with interviews of inmates by accredited reporters.

Are there any other forms of access that the press has to your facilities?

A Yes.

Q What are those, sir?

A As I mentioned a minute ago, when various dignitaries visit our institutions, they are usually followed by the press.

During the summer we had Senator Hughes, who is head of the Subcommittee on Narcotics and Alcoholism, with Senator Schweiker and Senator Harris and Senator Javits. We have many such occasions and the press usually comes. We take them through our institutions. They are able to chat, not in-depth interviews, but chat with the inmates.

On other occasions, when the news media wants to do a story, an in-depth story about conditions in the institution, we let them come in. And in a fourth instance, when we have major affairs, such as recently we had the Belfonte show, we had the James Brown show, athletic activities, the press is [75] invited in and they come in. On occasions like the latter two, they don't talk with the inmates at all.

Q When the press wishes to do an in-depth story in one of your facilities, are interviews with inmates permitted in conjunction with that?

A Yes.

Q Mr. Malcolm, has it been your experience in the position you now hold and the position you held previously that the question of corrections is important to the press in New York City?

A Very important, very important.

Q Mr. Malcolm, what experience have you had in terms of the frequency of requests from the press to interview individual inmates?

A Well, it hasn't been frequent at all. During the past year, since April 21, we could only count about thirteen men that have been interviewed at about a half dozen different times.

MR. WILSON: May I have a moment, Your Honor.

Could I have this marked as Plaintiffs' Exhibit No. 4, for identification, please.

THE COURT: Yes.

THE DEPUTY CLERK: Plaintiffs' Exhibit No. 4 marked for identification.

[76] (Whereupon, memorandum dated March 22, 1972 from Mr. Walsh to Mr. Malcolm was marked Plaintiffs' Exhibit No. 4, for identification.)

THE COURT: Do you have a copy for me?

MR. WILSON: Yes.

(Whereupon, the document was submitted to the Court.)

THE COURT: I am going to receive all of these as explanatory of the testimony.

(Whereupon, Plaintiffs' Exhibits 3 and 4 were received in evidence.)

BY MR. WILSON:

Q Mr. Malcolm, I show you Plaintiffs' Exhibit No. 4, for identification, and ask if you can identify it?

A Yes. This is an internal document that I asked one of my staff members, who is in our public relations section, to prepare for me; and it lists the number of people who have been interviewed since we started this policy throughout the system.

Q Mr. Malcolm, are you the custodian of the documents of the Department of Correction in New York City?

A Yes, I am.

Q How did Mr. Walsh obtain the information contained in Plaintiffs' Exhibit No. 4, for identification?

A Well, in each institution there is a jacket, an inmate [77] jacket, and he no doubt received it from the jacket. Of course, all of these interviews are arranged through the office that Mr. Walsh works in. He is really an assistant to the public affairs director.

Q Do the policies of your department require that a record be maintained of interviews or requests for interviews with inmates?

A Yes.

Q To the best of your knowledge, does this document, Plaintiffs' Exhibit No. 4, for identification, accurately reflect your experience with press requests for interviews with inmates since April 21, 1971?

A Yes, it does.

MR. WILSON: Your Honor, I would like to offer Plaintiffs' Exhibit No. 3, in evidence.

THE COURT: I have received 1 through 4.

Could we take a five-minute recess now, gentlemen, before Mr. Hannon asks any questions if he has any?

MR. HANNON: I have no objection to a recess at this time, Your Honor. I have questions.

THE COURT: I thought you would. Perhaps we could break now.

I take it you have finished your direct?

MR. WILSON: Just a couple more questions.

THE COURT: Let's finish up the direct and then we [78] will take a recess.

BY MR. WILSON:

Q Mr. Malcolm, could you identify Mr. Herbert Blyden, who is mentioned in Plaintiffs' Exhibit No. 4?

A Yes. Mr. Blyden is presently in the Bronx House of Detention to stand trial for his participation in the riots of 1970. He was brought down from Attica Prison, where he is serving a sentence there for robbery.

Q Is he well known?

A He is quite well known.

Q The document also makes reference to the Harlem 4. Would you identify the Harlem 4?

A Yes. This is a very sensational case back in New York City, which started eight years ago with six young defendants who had an alleged murder case against them. It is now down to four. They have had three mistrials, three hung juries, rather; and they are still there; and there has been a great deal of sentiment around this particular case.

Q In general, are the names of the inmates contained in this documents well known within the City?

A Not all of them. I would say Mr. Blyden, the Harlem 4, the Pyle Brothers. These are, I would say, the well-known names.

Q One further question. Does your policy on press access apply to pre-trial detainees as well as to those under [79] sentence?

A It applies to all of them.

MR. WILSON: One moment, Your Honor.

That will be all.

THE COURT: We will take five minutes.

(Whereupon, a short recess was taken.)

MR. WILSON: Your Honor, may I ask just two more questions?

THE COURT: Yes.

BY MR. WILSON:

Q Mr. Malcolm, is H. Rap Brown confined to one of your facilities?

A Yes, he is.

Q Does your policy permit him to be interviewed by the press?

A It certainly will.

MR. HANNON: If Your Honor please, my associates tell me you said you have a jury trial this afternoon at 2:00 o'clock; is that correct?

THE COURT: I am not going to go forward with the jury trial until the hearings on this matter are completed.

MR. HANNON: I have brought Mr. Procunier in from California.

THE COURT: I am quite aware of that, and if I have to put off the criminal trial, I am going to do it. I am going [80] to hear this matter out.

MR. HANNON: Oh, very fine. Tomorrow morning he has a conference with 200 judges in California, so I do want to get him out of town tonight.

THE COURT: I think that is more than an adequate reason. This is a case that I may have to continue but I am going to hear this through to conclusion. I would expect and rather hope we will be able to do it today.

MR. HANNON: I would hope so, too.

THE COURT: If I don't draw the jury in the other case until tomorrow morning, that is what we will do.

MR. HANNON: You put my mind at ease, Your Honor. Thank you.

THE COURT: I would plan to adjourn at the usual time of 12:30 and come back at 1:45.

MR. HANNON: Yes, sir.

THE COURT: Which is the way we will proceed.

MR. HANNON: Yes.

CROSS-EXAMINATION

BY MR. HANNON:

Q Mr. Malcolm, I understood you to say that you have about 11,500 persons institutionalized at the present time?

A That is correct.

Q In the course of a year you handle about 110,000?

A That is correct.

[81] Q Is it fair to say you have an in-and-out program going up there in New York City?

A About 7500 of the total of 11,500 are detainees. The others are sentence prisoners.

Q Seventy-five per cent are detainees?

A No, I said 7500. I said approximately 65 per cent are detainees.

Q If my arithmetic is right, then, 35 per cent are in under sentence for correctional purposes?

A That is correct, sir.

Q Now, Mr. Malcolm, I want to show you Government's Exhibits 1, 2 and 3—

THE COURT: I think you mean Plaintiffs'.

MR. HANNON: Plaintiffs', yes.

BY MR. HANNON:

Q —Plaintiffs' Exhibits 1, 2 and 3. On Exhibit 1, I want to refer to you in the first line where it refers to a "detention inmate."

On No. 2, in Paragraph d, "interview detention inmates"; and then No. 3, which is an amendment, as I understand it, we finally find the term, "inmate," alone and "detention" is left out.

This program of interviewing went into effect in April of 1971, is that right?

A That is correct.

[82] Q And the sole experience that you have had with it is from April '71 to the present time?

A Correct.

Q Now, Plaintiffs' Exhibits 1 and 2 refer to interviewing detention inmates. Is that what you mean, interviewing detention inmates?

A Well, the practice was to interview all inmates.

Q Well, it doesn't say that, does it, sir?

A It doesn't say that, but the fact is we interviewed all inmates.

Q Correctional as well as detention?

A Absolutely.

Q Do all the leaders of your penal institutions—did they understand that Plaintiffs' Exhibits 1 and 2, even though they made reference to "detention inmates," only, that it allowed interviews of those inmates that had been sentenced?

A Yes, because all interviews usually came through the central office to the office of public affairs.

Q What type of prisoners or inmates are we talking about, Mr. Malcolm, that you have up in New York City? What are they charged with?

A Anything from petty larceny to murder.

Q And that would be those that are in detention, would it not?

A That is correct.

[83] Q Now, you don't have anybody in the correctional institution that has been convicted of murder, do you?

A We have some convicted of manslaughter.

Q Manslaughter. What is the maximum period of time that a prisoner would serve in your correctional institution?

A Three years.

Q Three years?

A That is correct.

Q And if the term is in excess of three years, you send him some place else?

A He goes to a state institution.

Q Now, I gathered from what you said, Mr. Malcolm, that very few interviews have been refused.

Did you say that?

A I did say that.

Q At the same time, you said, if I remember correctly, very few have occurred?

A That is correct.

Q How many have occurred?

A We had about 13.

Q And how many have been refused?

A I can recall, I would say, less than five.

Q Now, who refused the five that you speak of?

A I refused them.

Q You did?

[84] Or my predecessor, Commissioner McGrath.

Q How many did you refuse and how many did he refuse?

A Well, I can say since I have been in office two months, I have turned down one interview.

Q So that he has turned down four?

A It could be four; it could be less. The number is very very small.

Q What was your reason for turning down the interview?

A The judge was picking a jury in this particular case and the judge asked me to delay it.

Q And your predecessor, what were his reasons for turning down the four or less that he turned down?

A I don't know.

Q Are there any standards that you have set forth in those regulations spelling out for the benefit of the press, so that the press will know when they may interview a prisoner and when they may not?

A Well, as a general, broad—

Q Would you answer my question, first, please? Are there any standards in any of your regulations that the press can look to to determine for itself whether or not you will or won't allow a particular interview?

A Well, it is difficult to say because we don't give this out to the press. This has been published in the newspaper. Not the order; this is an internal order.

[85] Q They are regulations, are they not?

A These are regulations.

Q They are public documents, are they not?

A That is right.

Q I gather from what you are saying, Mr. Malcolm,—so we need not pursue it—there are no standards in there, are there?

A Yes, sir.

THE COURT: The only standard is administrative feasibility.

THE WITNESS: The standard—

MR. HANNON: That is what I want him to say.

THE WITNES: The standard is one whereby the Commissioner, the Department of Correction can make a decision to refuse the interview; and it is based on the fact whether or not he determines at that particular time it is proper and appropriate, if it will affect the security of the institution, and good order; and it is based on that.

BY MR. HANNON:

Q Is that a major factor in your judgment, the security of the institution?

A Absolutely.

Q Of the 15 interviews that you say were conducted, how many of those were conducted with people that were in a correctional institution, that is to say, that were sentenced, [86] as contrasted to those that are detained?

A None have been conducted. We haven't had any requests.

Q For which?

A For the sentenced.

Q So no interviews have been conducted respecting anybody that is serving time in the New York City facility?

A That is right.

Q Again, Mr. Malcolm, so it is clear in my mind, a major factor in your judgment respecting whether an interview should be allowed or not is whether the interview is going to impair the security of the institution?

A Right.

Q Now, in your direct examination, Mr. Malcolm, you were talking about—I may be paraphrasing it—Big Wheels. You said you have your share of Big Wheels in your institutional system.

A If you want to use that term. That is not my term.

Q Let's use your term. What would your term for it be?

A Well, people who have been connected with fairly sensational cases.

Q What about the Big Wheel, if I may, within the institution, itself? Do you have some of those?

A You have people there who, as I said before, have been connected with sensational cases.

Q Do you from time to time transfer a man out of one [87] of your facilities into another because he is a trouble-maker?

A Oh, yes.

Q You do that?

A That happens.

Q Would you allow him to be interviewed by the press, Mr. Malcolm?

A It all depends on the circumstance.

Q You referred to Mr. Blyden and you referred to the Harlem 4 and you referred to the Pyle Brothers.

I gather from what you said, Mr. Malcolm, that these individuals are fairly well known in the New York City area?

A That is correct, they are.

Q Would you be of the opinion that the national news media has any interest in any one of them?

A I really don't know. I can say in the case of Mr. Blyden that news media from out of town came to interview him.

Q From his home town?

A Oh, I don't know what his home town is.

Q CBS hasn't been knocking on your door to talk to these people, has it?

A All the news media—

THE COURT: I don't understand what you are getting at.

MR. HANNON: I will withdraw the question.

[88] THE COURT: News Week Magazine wanted to interview him, according to this exhibit. Also, the New York Times. Both of them have some national circulation.

Time and Life has some national circulation, as I understand it.

I don't understand what your point is.

MR. HANNON: I have asked the question; he has answered it. I am satisfied.

THE COURT: Very well.

MR. HANNON: I have no further questions.

MR. WILSON: I have a few, Your Honor.

REDIRECT EXAMINATION

BY MR. WILSON:

Q Mr. Malcolm, of the prisoners in your facilities, which would you say, based on your experience, are the most difficult, the detainees or those under sentence?

A The detainees, no question about it.

Q You mentioned the Harlem 4 in your testimony. They are detainees; is that correct?

A They are detainees.

Q How long have they been in detention?

THE COURT: That is a euphemism in their case.

THE WITNESS: Eight years.

BY MR. WILSON:

Q Mr. Malcolm, do you reserve the final authority in [89] terms of granting or denying press interviews?

A I do.

Q Under what circumstances in an emergency situation would you say a denial would be justified?

A When the interview—

THE COURT: Now, is that issue before me? As I understood it, there was no contention here by anybody that this was a request for interviews in an emergency condition.

MR. WILSON: No Your Honor. It was raised on cross-examination.

THE COURT: I am trying to look at the lawsuit. As I understand it, this lawsuit has nothing to do with interviews in emergency conditions. Isn't that right? So what difference does it make what they would do in emergency conditions?

MR. WILSON: It may depend on the definition of the strike, Your Honor.

THE COURT: There is no request for an interview during a strike here. The strike is over. Mr. Carlson

has told the public that the strike is over; and the testimony before me is that it is over.

I understand we are not concerned with the difficult problem of riot or fire or inflammatory conditions within a prison at a particular moment. Now, if I am wrong about that, I want to be corrected. I don't understand that that is what has been challenged. In fact, all of your papers were presented [90] to me on the basis that this was not that kind of situation.

MR. WILSON: As far as that is concerned, that is correct, Your Honor.

BY MR. WILSON:

Q Mr. Malcolm, you said security would be a chief consideration in terms of press interviews.

A Yes, that would be the main consideration.

Q Do you feel allowing press interviews in any way aids your security problems?

A Would you repeat that?

Q Do you feel that allowing the press to have access to your inmates helps you in any way in your security problems?

A Yes, we feel that.

Q In what way, sir?

A In that it begins to expose conditions that are in the institution, so everybody can find out exactly what is going on, rather than keeping them under cover.

MR. WILSON: Thank you, Mr. Malcolm.

THE COURT: Thank you very much, Mr. Malcolm.

(Witness excused.)

MR. WILSON: Mr. Leroy Anderson.

WHEREUPON—

LEROY ANDERSON

was called as a witness by the Plaintiffs, and having been first duly sworn, was examined and testified as follows:

[91] DIRECT EXAMINATION

BY MR. WILSON:

Q Sir, would you state your name and address for the record, please?

A Leroy Anderson, 7413 Keystone Lane, Forestville, Maryland.

Q Mr. Anderson, where are you employed and in what capacity?

A At the D.C. Department of Corrections, as Executive Assistant to the Director.

Q How long have you been employed by the District of Columbia Department of Corrections?

A Nearly two years.

Q Have you held any other positions during that time?

A Yes, I previously have been a Sepecial Assistant to the Director and Public Information Officer.

Q Would you describe briefly for the Court your present duties and responsibilities as Executive Assistant to the Director?

A Essentially, it is to assure the Director of smooth liaison with other District agencies, the District Building, the Hill. I serve as office manager and the coordinator between the Director's office and the principal operating and administrative components of the Department.

Q Mr. Anderson, what are the facilities that are under [92] the jurisdiction of your department?

A We have five main facilities: The D.C. Jail, the Women's Detention Center, the Lorton Correctional Complex, which includes minimum security and the Lorton Youth Center. In addition, we have 13 community treatment centers.

Q Which of those facilities are for sentenced prisoners?

A The Correctional Complex, the Women's Detention Center, the Youth Center, and the community treatment centers.

Q Are there any sentenced prisoners at D.C. Jail?

A Yes.

Q Approximately what percentage of the population?

A At varying times between 10 and 15 per cent.

Q What is the current population of the Lorton Complex that you described?

A The Lorton Complex, exclusive of minimum security, currently has a population slightly in excess of 1900.

Q What is the current population of D.C. Jail?

A Approximately 1200.

Q What is the range of crimes?

THE COURT: You know you, perhaps with some appropriateness, can assume the Court has some knowledge of this. I send people to each of these institutions every week.

MR. WILSON: Yes, Your Honor.

THE COURT: I don't want to stop you from making a record but I think it is fairly clear that these institutions [93] cover a wide variety of offenses that are not under Title 18 of the Code.

MR. WILSON: I ask that these documents be marked as Plaintiffs' Exhibits 5 through 8, for identification.

THE DEPUTY CLERK: Plaintiffs' Exhibits 5 through 8 marked for identification.

(Whereupon, D.C. Corrections Department Order 1300.3B, dated January 24, 1972 was marked Plaintiffs' Exhibit No. 5, for identification.)

(Whereupon, D.C. Corrections Department Order 1300.3A, dated April 2, 1971 was marked Plaintiffs' Exhibit No. 6, for identification.)

(Whereupon, D.C. Corrections Department document 1300.3, dated November 2, 1966 was marked Plaintiffs' Exhibit No. 7, for identification.)

(Whereupon, D.C. Corrections Department document 1300.1, dated August 10, 1956 was marked Plaintiffs' Exhibit No. 8, for identification.)

[94] BY MR. WILSON:

Q Mr. Anderson, I show you Plaintiffs' Exhibit Nos. 5 through 8, marked for identification, and ask if you can identify them?

A Exhibit 5 is a proposed department order to supplement the existing department order on public and news media relations.

Exhibit 6 is the current order on this subject.

Exhibit—is that No. 1 or 7?

Q It is No. 7.

A Exhibits 7 and 8 are previous department orders which were rescinded by Exhibit 6.

Q I ask you to look at Exhibit 5, again. It is dated January 24, 1972.

Do you still say that is a proposed policy?

A Yes.

Q That is a proposed policy. Sir, did you have any role in drafting any of those documents?

A I wrote Exhibits 5 and 6.

Q Do those reflect the policies of your department on the question of press access to your facilities from the period 1956 to the present?

A They do.

MR. WILSON: Your Honor, I offer those exhibits in evidence.

THE COURT: They may be received.

[95] (Whereupon, Plaintiffs Exhibits Nos. 5, 6, 7 and 8 were received in evidence.)

BY MR. WILSON:

Q Mr. Anderson, what was the policy in effect when you joined the Department of Corrections?

A The policy that was in effect at that time was virtually identical to the current department order on public and press relations.

Q What did the written directive that was in effect, Plaintiffs' Exhibit No. 7, show the policy to be?

THE COURT: That speaks for itself, doesn't it?

THE WITNESS: Yes, I would have to rapidly look over it again. My memory is dim on it. But it was a rather—

BY MR. WILSON:

Q Does it not prohibit individual interviews by the press with inmates?

A I don't recall if it did. My recollection is dim on it.

Q Would you examine it?

A Yes, it did not permit—

THE COURT: That is in "d."

THE WITNESS: Yes, sir.

BY MR. WILSON:

Q What was the practice when you joined the department [96] in 1970?

A We did permit interviews with inmates.

Q Were there any written procedures, policies or guidelines for such interviews at that time in 1970?

A No.

Q Now, describe briefly the current policy. Under what conditions may a newsman interview inmates in the facilities under the jurisdiction of your department?

A We make two distinctions: One, a formal request for an interview with an individual inmate, our policy requires that it be in writing to the Director, who would make a decision to permit the interview or to decline the interview.

We distinguish that from the more casual kind of interview that would involve members of the media at an institution for any of a variety of reasons talking to inmates collectively or individually.

Q Now, with respect to the former, those where written requests are made—

A Yes.

Q —is the consent of the inmate required?

A Yes, it is.

Q Where can the interviews take place?

A Anywhere.

Q Need there be a staff supervision or escort for such interviews?

[97] A Escort perhaps but not supervision.

Q Not supervision?

A Yes.

Q What do you mean by that distinction?

A If, for example, the interview were to take place in the visiting hall, the inmate would be escorted to the visiting hall, but the escort would not monitor nor take part in the interview.

Q May the name of the prisoner, of the inmate be used by the reporter?

A With the inmate's permission, yes.

THE COURT: You set up ground rules for each interview, don't you? That is what this says.

THE WITNESS: Yes, the ground rules would be between a superintendent and the inquiring member of the media.

THE COURT: Yes. And what do you mean by that, what they can talk about and what they can print?

THE WITNESS: No, sir, what we mean by that is basically conditions under which an interview is to be conducted, the length of time—

THE COURT: What about the subject matter?

THE WITNESS: No, sir, we don't make—

THE COURT: Nothing on the subject matter?

THE WITNESS: No.

THE COURT: So by, ground rules, you mean where and [98] how long the man is available?

THE WITNESS: Yes.

THE COURT: Time and things like that?

THE WITNESS: Yes, sir.

BY MR. WILSON:

Q Do the practices and policies you described apply to all men and women confined to the facilities under your jurisdiction?

A Only to those serving sentences.

Q Why is the distinction drawn between those serving sentences and those in detention?

A Primarily because it is our position that those in detention are essentially wards of the courts and we provide only housing for the inmate. So we don't feel that we could make a decision unilaterally involving inmates in detention.

Q Have you encountered any problems or difficulties with respect to the form of press access that we are talking about?

A No.

Q Interviews with individual inmates?

A No.

Q None at all?

A Not in terms of formal interview. We have had some minor problems with the volume of press interest on a given situation, but no specific problems with a formal interview.

[99] Q Are any changes contemplated in policy as stated in the documents that have been placed in evidence?

A Yes, and they are spelled out in Exhibit 5, I believe. We will broaden the order so that the matter of facilitating the interview will be easier. They can deal more directly with the superintendent; they can make a call at the institution during normal business hours; and upon presenting an acceptable identification be admitted to the institution.

Q How does that change the current policy?

A Well, insofar as an interview is concerned, the request must go to the Director in writing. This will not be true any longer. We will still continue to protect the right of the inmate to anonymity. It puts the decision at the lowest possible responsible level, essentially.

THE COURT: Do these rules apply to sentenced prisoners or prisoners being held pending trial or sentence?

THE WITNESS: Only sentenced prisoners.

THE COURT: Only sentenced prisoners?

THE WITNESS: Yes, sir.

BY MR. WILSON:

Q Based on your experience in the department, how frequently have requests been made to interview individual inmates under these policies?

A To the best of my knowledge, three times.

Q Only three requests for interviews of individual [100] inmates?

A Yes.

Q Are there other forms of press access that you allow, apart from interviews with individual inmates?

A Yes. We encourage press coverage of programs, the institution, per se; we react to breaking news events; we restrict news coverage or the presence of the media members in emergency situations. Generally, we have a very flexible attitude about it.

Q Does your department consider a strike an emergency situation?

A Yes.

Q How frequently do you get other types of requests, other than for interviews, for press access on an average?

A It is very difficult to say because the department has been in the news for a long time and for many reasons during the past year. If I had to give you some kind of average, I might say once a week.

Q Approximately once a week. Are inmates allowed access to the press in the sense that they can initiate a contact with the press?

A Yes.

Q Mr. Anderson, based on your experience, what have been the benefits of your policy of permitting interviews with individual inmates?

[101] A Well, essentially, the greatest benefit, in my judgment, is the extension of what the department is trying to do in terms of having broadly-based community programs. That is, by introducing and making as free as reasonably possible the access to the news media, we have introduced another natural, normal kind of element that we could expect people in the free society to have, no greater nor any less. Perhaps under some circumstances somewhat less.

We feel that the media, itself, because of this kind of exposure, has become more aware of what has happened and has not happened in the correctional institutions in corrections, and has given the public a broader understanding in most cases of what our department is trying to do and what our needs are.

THE COURT: Well now, that surely hasn't come about because of three interviews.

THE WITNESS: No, sir. I thought the question was directed to the—

THE COURT: I think perhaps the question was very broad but, as a practical matter, the press has not taken advantage of the opportunity to interview here, so you really cannot say what the opportunity for interviewing has done, can you?

THE WITNESS: No, sir, I can't.

MR. WILSON: One moment, Your Honor.
That is all, Your Honor.

[102]

CROSS-EXAMINATION

BY MR. HANNON:

Q Mr. Anderson, you were asked to answer questions based upon your experience, sir.

Would you tell me what your experience is?

A I have been with the department two years, most of which time I was the principal officer charged with the responsibility of dealing with the media.

Q Dealing with the media?

A Yes, sir.

Q Two years?

Q Have you ever been in charge of operating the D.C. Jail?

A No, sir.

Q Have you ever been in charge of operating any of the women's detention facilities?

A No, sir.

Q Have you ever been in charge of operating Lorton?

A No, sir.

Q Have you ever held any job at any one of these penal institutions?

A No, sir.

Q Have you ever had an office in any one of these penal institutions?

[103] A No, sir.

Q Have you ever been inside one of these penal institutions to see how they really are?

A Yes, sir.

Q Pardon me?

A Yes, sir.

Q On a tour?

A By myself, many times.

Q Many times. Now, Mr. Anderson, let me ask you this, please: The prisoners that you are talking about that are serving time in the penal institutions in the District of Columbia area are sentenced in which courts?

A Sentenced in the Superior Court, in the United States District Court.

Q They come out of our courts right here in the District of Columbia, do they not?

A Yes, sir, most of them.

Q Okay. Then from time to time would you acknowledge sir, on the basis of your experience, that there is such a thing as a dangerous type of prisoner?

A Yes, sir.

Q Would you acknowledge, on the basis of your experience, that there is such a thing as an incorrigible type of prisoner?

A Yes, sir.

Q Would you acknowledge, on the basis of your experience, [104] that there are real trouble-makers that are in penal institutions?

A Yes, sir.

Q Would you tell Judge Gesell, sir, what the D.C. Department of Corrections does with the so-called dangerous, incorrigible, trouble-maker type prisoners that end up, for example, at Lorton?

THE COURT: You mean with respect to interviews?

MR. HANNON: No.

THE COURT: I know how the prison is run, Mr. Hannon.

MR. HANNON: I want to know what he does, when the D.C. system has a real trouble-maker or dangerous prisoner on its hands, Your Honor. I want him to tell this Court.

THE COURT: I know, but he can say it. I don't see what that has to do with my case. That has to do with an interesting question about whether you transfer people or put them in maximum security, and so forth.

What has that got to do with my case?

MR. HANNON: We are going to be talking about the type of prisoners that we deal with in Federal penal institutions as contrasted with the type of penal institutions that we are talking about here.

THE COURT: I think that is significant and, in a large part, it is a wholly different class of prisoners that you have in the Federal penitentiary, white-collar type of prisoners. Twenty per cent of them are automobile thieves in [105] the Federal penitentiary, 20 per cent. I imagine what this gentleman has is something like 40 per cent armed robbers.

MR. HANNON: I would imagine there would be the same amount, too. But Your Honor does accept as fact the testimony that these prisoners are transferred from Lorton into the Federal penal system?

THE COURT: Oh, yes.

MR. HANNON: Okay. Then he need not answer the question. Thank you.

THE COURT: Oh, yes, some of them are. Some of them are.

REDIRECT EXAMINATION

BY MR. WILSON:

Q Mr. Anderson, who is the Director of the Department of Corrections?

A Kenneth L. Hardy.

Q Does he approve of the policies you have described today?

A Yes, he does.

MR. WILSON: Thank you.

That is all, Your Honor.

THE COURT: Mr. Hannon, I am not attempting to be involved in any dispute with you. There are very hardened criminals in the Federal penitentiary system. My only point is, according to the 1970 figures of the Federal prisoners, [106] 9.1 per cent are there for crimes of force, as opposed, for example, to 20 per cent for automobile theft, 11 per cent for narcotics and marijuana, and so forth—forgery, liquor laws, postal thefts, Selective Service and other things.

There is obviously a very serious hardened core of prisoners in the Federal penitentiary. But I was talking about the general mix. The general mix, I would think, on my experience—if I am wrong, I want your people to straighten me out about it—is less trouble-making group of prisoners as a whole in the Federal penitentiaries than there are in institutions such as Lorton.

MR. HANNON: We are not talking about the general mix, if Your Honor please. I can't remember, when I was in the criminal division, the names of the many many individuals that I convicted of crimes that were committed here in the District of Columbia. I can't re-

member the names of the judges that they were tried before. I dare say that Your Honor can't remember many of the prisoners that were convicted in your Court. We can't remember because we know that so far as the new media is concerned, by comparability, the news media doesn't show any more interest in those people after they are convicted then you and I would have insofar as having a reason to remember them. There is such a thing as a newsworthy inmate, and that is what we are talking about.

THE COURT: I understand that.

[107] MR. HANNON: In this case, and that is why I wanted it clear.

THE COURT: I see what you are talking about.

MR. HANNON: They send those people like the notorious—what is his name—Bryant, I think he was convicted in your Court.

THE COURT: I sent Mr. Billie Bryant to a Federal penitentiary.

MR. HANNON: For a good reason.

THE COURT: I am quite familiar with that. I was talking about the general mix of prisoners.

MR. HANNON: I think it is not relevant, really. I will agree, on the basis of the general mix, that there is a diversification. For example, you have got your draft evaders, you have got your robberies, and then you have got your car thefts. There is a mix in that sense and we would agree that they are not homogenized in the sense they are all the same.

THE COURT: I am sure some of the most hardened criminals in the country are resting in Federal penitentiaries. I have no dispute about that whatsoever. My comment was only about the mix. I didn't want to have a misunderstanding with you or your colleagues about it.

MR. HANNON: I didn't want Your Honor to misunderstand why we think the question is relevant and why we think it is important for Your Honor to bear it in mind.

[108] MR. CALIFANO: Your Honor, we have no further questions of this witness.

THE COURT: You are excused, thank you, sir.

MR. CALIFANO: We have no further witnesses, with the understanding that the Government is going to call Mr. Carlson. We have subpoenaed Mr. Carlson.

MR. HANNON: I don't have any understanding that I am going to call Mr. Carlson.

THE COURT: What he is saying, if you are not going to, he will. That is what he is saying.

What is the answer?

MR. HANNON: Well, I really don't have to answer it, Your Honor, but I will tell Your Honor.

THE COURT: I thought you would, because we are proceeding here somewhat informally in an effort to get at the information.

Would you rather put him on yourself because you know what he has to say?

MR. HANNON: I will put him on and I am sure Your Honor would be terribly disappointed in me if I didn't put him on. I am sure Your Honor has some questions.

THE COURT: I have a few. Mr. Carlson has been in my Court before and I am extremely impressed with what he is doing in the Federal system. I think it would be useful to have his testimony and I would much prefer to have it than [109] have a record closed without it. It is a matter of indifference to me as to who calls him.

MR. HANNON: Not to me. I will call him. Mr. Califano can rest.

THE COURT: Mr. Califano is giving you that opportunity.

MR. HANNON: I take it the Plaintiff has rested?

MR. CALIFANO: Yes.

THE COURT: Yes.

MR. HANNON: May I call, on behalf of the Government Mr. Procunier, please.

WHEREUPON—

RAYMOND K. PROCUNIER

was called as a witness by the Defendants, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HANNON:

Q Mr. Procunier, would you tell us your name, please, and spell your last name for the benefit of our Court Reporter?

A Raymond K. Procunier, P-R-O-C-U-N-I-E-R.

Q Mr. Procunier, where are you employed, please?

A I am Director of Corrections for the State of California.

Q And how long have you been employed in that capacity, sir?

[110] A Since May of 1967.

Q Now, would you tell us, if you please, your history insofar as it relates to penal institutions?

A I started in corrections in April 1948.

Q If you will slow down a little bit, our Reporter will be able to keep up with you, please.

THE COURT: She is pretty good; go right ahead.

THE WITNESS: I started as a correctional officer in the California Department of Corrections at the California Institution for men, a minimum security institution in Southern California, in April 1948, as sergeant lieutenant there and training officer for that facility, and transferred to Sacramento in 1956 as an Assistant Departmental Personnel Officer. From there I went to Utah for a year; during 1957-58 as Deputy Director, Personnel Management and Training; and then for six months, the last part of it, I was Director of Corrections in Utah, after they had some difficulty, and during the reorganization and revamping period; followed by return to California as Departmental Training Officer and Associate Superintendent for four years at the California Medical Facility, our psychiatric hospital in Bakersfield. Following that, I was the Superintendent for Inmate Classification in charge of all classification and transfers in the department; then Associate Superintendent of Custody and Superintendent—Associate Superintendent of Custody at the dual vocation institution, [111] minimum and maximum security institution for young

adult prisoners at Tracy; following that, as Superintendent. That brings it up to '67. From then to now, as the Director of Corrections.

Q Mr. Procunier, would you describe for His Honor what the California penal institutions consist of, please?

A We have 12 major institutions that handle all of the Superior Court commitments that are sent to state prison. We have a total prison population of women and men, and our civil narcotics addict program in California, where the men are committed and women are committed under civil commitments for the control of narcotics addiction, a total of about 20,000, approximately 20,000 people in prison, 21 to 22 thousand people on parole.

Q Twenty thousand in prison in California?

A Yes.

Q Approximately?

A Yes.

Q For what type of offenses, Mr. Procunier?

A For the whole range of felonies.

THE COURT: From petty larceny to murder?

THE WITNESS: Well, we have very few petty larcenies any more. Felonies.

BY MR. HANNON:

Q What kind of staff do you have?

A Seven thousand, approximately 7,000 members on the [112] staff.

Q Who runs each of these institutions?

A The warden or superintendent.

Q And how many would that be?

A Twelve.

Q Twelve. And you deal closely with them in the operations of the system in California?

A Yes, you bet.

Q Now, at one time, did the State of California allow interviews of prisoners by the news media?

A Yes, we still do, but we had a policy at one time unless there was some obvious reason why not that the individual interviews by name and number were allowed with the accredited press.

Q So that the newspaperman could make arrangements through your office to interview, face-to-face interview with prisoners?

A It wasn't necessarily through my office. He could make arrangements with the warden, superintendent or through my office.

Q Has that practice been discontinued?

A Yes.

Q Do you know or did you know an individual named George Jackson?

A I didn't know him personally.

[113] Q But you knew of him?

A Very well.

Q Was he confined in penal institutions in California?

A Yes.

Q Under your jurisdiction?

A Yes.

Q He is deceased, is he not?

A Yes.

Q Did Mr. George Jackson have anything to do with the judgment of your office to discontinue news media interviews of prisoners?

A Yes.

Q Now, would you tell Judge Gesell, please, the criminal history of George Jackson as you recall it?

A I can't tell you specifically, but it dates back to his early childhood of being involved with the law. He was doing time at the time of the involvement in the incidents that are now very notorious for armed robbery.

Q And he had a long criminal history, did he not?

A Yes.

Q He had been in and out of penal institutions in California?

A Yes.

Q At the time of his death, how old was he, do you remember?

[114] A I don't remember.

Q Approximately?

A Twenty-eight, twenty-nine, I don't know. It is just a guess on my part.

Q Now, when did—

THE COURT: Are you telling the Court, because of the Jackson incident, you have permanently discontinued any opportunity for interviewing by the press of 20,000 inmates—

THE WITNESS: No.

THE COURT: —for the future in your system?

THE WITNESS: No. I responded to the question, did his relationship with the press in individual interviews have anything to do with the change of policy. The answer is, yes.

THE COURT: The change of policy doesn't prohibit interviews?

THE WITNESS: No individual interviews upon request by the media are any longer allowed.

THE COURT: Specific interviews are no longer allowed? You have prohibited that throughout the system because of the Jackson situation?

THE WITNESS: No, that was one element in the decision. That was my response to the question.

THE COURT: I am really anxious to know not so much about Jackson as the reasons why you discontinued the practice.

MR. HANNON: Does Your Honor know Jackson?

[115] THE COURT: No, he was not a personal friend of mine. I read the papers like everybody else.

MR. HANNON: I am anxious that you know about him.

BY MR. HANNON:

Q So would you tell us, Mr. Procunier, about George Jackson, and what his history was in California?

A George Jackson was a relatively unknown outside the prison but well known inside the institution up until January 1969, when he was charged with the murder of—he, along with two others charged with the murder of a correctional officer at our California training facility at Soledad. Then from then on until August 21, the incident at San Quentin, in which he was killed, he became more and more notorious and as a result in part

of our policy for allowing interviews with individual inmates by the press.

Q What were the circumstances under which George Jackson was killed at San Quentin?

A By a method—it is in trial now, so we do not know for sure, but a gun was smuggled into San Quentin to him and he attempted to escape and was killed in the escape attempt.

Q Did he kill anybody in the effort to escape?

A Yes.

Q How many?

A There were three people, three staff members killed and two inmates killed, and three staff members wounded in the [116] circumstances surrounding the escape.

Q All right. Now, prior to his death, did the press in California have access to George Jackson?

A Yes.

Q And what kind of access did they have?

A Well, it was our policy at the time for accredited news media to hold individual interviews upon requests, and until we stopped that because of the burden of work and the problems we felt it was creating, he had access for a period of about six months there, almost unlimited access.

Q During the six-month period, can you recall, Mr. Procunier, how many interviews did he have with the press?

A From August of 1970 until June of 1971, we have recorded—and there may be many more—33 interviews with various media reporters.

Q And were these interviews that Jackson had with the press over the six-month period published in the newspapers?

A Yes, many of them.

Q Then did the penal institutions in California have free access to newspapers?

A With the exception of on rare occasions that some publications, issue-by-issue, but the answer, generally, is, yes to all what we call legitimate—

THE COURT: That is because of your policy. You could have stopped the papers from coming in, couldn't you?

[117] **THE WITNESS:** No.

THE COURT: You can't stop the newspapers?

THE WITNESS: No, we have a section in our Penal Code, enacted three years ago, that we cannot stop anything coming in unless issue-by-issue it was determined, it is our determination that it is inciting riot or people to violence. Anything that goes through the mail, we must allow in.

THE COURT: Oh, yes, but if you felt that Jackson's comments to the press were creating internal difficulties, you could have censored that, couldn't you?

THE WITNESS: It would have been impossible, sir, with the magnitude of the—

THE COURT: It would not have been administrative-ly possible?

THE WITNESS: Impossible, because the results of the interviews were in most all the publications that were coming in. They come in by the hundreds.

BY MR. HANNON:

Q Now, what the message, if you will, that George Jackson had that was being published in the press and being sent into your institutions, please?

A I can't say specifically. Generally, it was our opinion, after reviewing this, that the message was to the dissident type of inmates to not cooperate was the way to bring about change and to cooperate was to perpetuate the system [118] as he saw it; and it was destructive, in terms of management principles, a destructive message, in our opinion.

Q What did the interviews, in your judgment, Mr. Procunier, do to the image of George Jackson? Do you have an opinion on that?

A It magnified, in our opinion, a negative leadership role, influencing men throughout the department to adopt the same type of attitude.

Q Now, at about the time that this was going on, did you sense or discern any change in the disciplinary prob-

lems of the penal institutions in California with respect to inmates?

A We felt very strongly that this was the case.

Q Did you make a judgment, Mr. Procnier, as to what was the cause of the disciplinary problems that were now erupting?

A Yes.

Q What was the judgment?

A The judgment was that the results of interviews with George Jackson and other inmates who had similar attitudes was a part of the increase in problems in the department.

THE COURT: I don't want to cut Mr. Hannon off, but I am sitting here trying to find out what you did about it. What are your rules now?

THE WITNESS: We have changed it now. The interview policy with the media is almost identical with the Federal requirements. The only change that we made is this: We will [119] not allow an interview, a press interview or interview with the the media at their request by specific name and number. We haven't changed the accessibility of the institution and talking to inmates.

THE COURT: So, it is more or less like the Federal policy?

THE WITNESS: Almost identical to the Federal policy, with a few modifications. We changed from the open policy to what the Federals are doing now. We have some other changes, but they are minor.

BY MR. HANNON:

Q The significant change is that the press is no longer allowed to interview prisoners, as such?

A The significant change is that they still interview inmates. They interview or talk with them, or any way you want to put it, but they do not do it on their own initiative with specific inmates. I can expand on that, if you want me to, to make it clear.

Q Please do.

A For example, just recently, because of the interest in California in the death penalty, a reporter from one of the major newspapers in the State wanted to do a

story on the death penalty and he wanted to talk to some men who had had the death penalty commuted to life. Prior to that, he would have come in with several names of inmates he wanted to talk to and [120] he would have talked to them. Now we had each warden and superintendent give us the names of four, five men who would talk to him; and we gave him the list and said: Who do you want to talk to.

THE COURT: In other words, you made sure he wasn't talking to a trouble-maker?

THE WITNESS: I am sure they did. I didn't give them those instructions.

THE COURT: That was the general effort?

THE WITNESS: The general effort is to minimize publicizing the trouble-makers.

THE COURT: Right.

THE WITNESS: That is the general thrust of the thing.

THE COURT: Permitting interviews, otherwise?

THE WITNESS: Yes.

THE COURT: The Federal policy is flat. You understand the Federal policy is no interviews. The Federal policy prohibits interviews without qualification.

THE WITNESS: May I expand on this a little bit?

THE COURT: Yes, I want your help. You have had so much experience.

THE WITNESS: What I heard them talking about earlier, interviews or conversations, we don't distinguish between the two. If an accredited reporter wants to tour San Quentin or Folsom, or some place, and in the process of the tour, as he [121] is going around, he can hold conversations or interviews, or whatever he wants, with whatever inmates he wants to. He can't come in and say, I want to see Joe Doakes. We won't let him do that.

THE COURT: When he has that conversation, chat or interview, is it supervised or can he talk to him without any custodial or other person overhearing?

THE WITNESS: That would depend on the circumstances. This decision would be made on an individual basis. If I were walking through the yard with a news-

paperman and he wanted to talk to an inmate, it would depend on the inmate and the circumstances, whether I would step aside or not.

THE COURT: Right. On the other hand, if he is interested in a subject matter, such as the death penalty, you will permit some interviews there of selected people, not chosen necessarily by him; is that correct?

THE WITNESS: Not specifically. Not chosen by him under any circumstances, but we allow that type of conversation or interview.

THE COURT: That is unsupervised?

THE WITNESS: Yes, can be or can't be. We make that decision on an individual basis.

THE COURT: A wholly individual basis?

THE WITNESS: Yes.

THE COURT: Now I understand. Thank you.

[122] Mr. Hannon, you proceed the way you want.

BY MR. HANNON:

Q That is comparable, is it not, Mr. Procunier, to the group discussion that we spoke of here today, that we heard about, that occurred at Lewisburg?

A I don't know what occurred at Lewisburg.

Q Well, let me change it and ask, essentially, is there any difference between the arrangement that you allow, where you have a group interviewed by the press, and the random selection system which we have at Lewisburg, where we will pick out at random 15 or 20 inmates and allow the members of the press to interview them? Are they essentially the same?

A It is essentially the same as I heard the warden offered the reporter to do in the segregation area.

THE COURT: In other words, you don't permit individual interviews under any circumstances?

THE WITNESS: No, we do. I understood that in the segregation area the reporter was allowed to—

THE COURT: To see a group.

THE WITNESS: —walk down through, past the cells, and have a conversation with the inmates.

MR. HANNON: Yes, that is correct.

THE WITNESS: Where we would allow them to interview them in a group.

[123] BY MR. HANNON:

Q Now, would you allow a member of the news media to come in and talk to Manson, to interview Manson?

A No.

Q Or Sirhan Sirhan?

A No. Not in—no.

Q Now, did you make any judgment at all, Mr. Procnier, respecting what effect if any the press interview, such as was allowed with George Jackson, had upon the rehabilitative efforts of the institution with respect to that particular inmate?

A Yes. This was one of the major bases for the decision. There were two or three different factors. One was the disturbance that it causes in other people; and secondly, it is our chore to do two things, we feel; and that is, to house people securely that are sent to us, and secondly, to do everything we can within our power and within our resources to prepare them for return to society.

The first thing that happens, we found out over the years, collectively, that before a man makes any kind of a change, there must be a change in his attitude. If a man is encouraged by increased notoriety and this encourages others to pursue this same thing, their attitude is such that we can't deal with them in a constructive way. This was one of the major considerations in changing the policy.

Q Did you conclude that this type of interview did [124] encourage other prisoners to follow the way of George Jackson?

A Yes, we feel very strongly that that is true.

Q That impairs the institution's efforts to rehabilitate these people?

A And to deal with them in a constructive way, yes.

Q Now, the George Jackson that we are speaking of was one. Were there others that you can call to mind that the press had an interest in interviewing?

A Yes.

Q Would you name a couple of them for me, please?

A There was a man by the name of Drumgo and one by the name of Cluchette.

Q Who are they?

A They were the co-defendants in the same murder trial.

Q The Soledad Brothers?

A That is what they are euphemistically known as, yes.

Q Now—

THE COURT: Your prohibition of interviews affects all of your work release and industrial work programs, and release programs, all of that, all the way through the system?

THE WITNESS: Again, I want to emphasize, on an individual request basis. It doesn't prohibit that if the person were touring. It does on an individual request basis; it prohibits it with everyone.

THE COURT: No matter what their status is in the [125] correctional system?

THE WITNESS: Right.

MR. HANNON: May I have Your Honor's indulgence, please, sir.

I have no further questions of Mr. Procunier, Your Honor.

THE COURT: Are you going to have many? I know this gentleman wants to get away.

When does your plane go?

THE WITNESS: 5:45. I have plenty of time, now that I am on the stand. I don't think they will want to talk to me that long.

THE COURT: No, they won't. I think at this time we had better break until 1:45. It is a convenient point and I am sure you will get off and get back on schedule with the other judges.

THE WITNESS: I appreciate that, Your Honor.

THE COURT: 1:45, then. I have one brief arraignment at 1:45 and that is all. Then we will go ahead.

(Whereupon, at at 12:30 p.m., the hearing was recessed, pursuant to reconvening at 1:45 p.m. of the same day.)

[126] AFTERNOON SESSION

(Whereupon, the hearing reconvened at 1:50 p.m.)

THE COURT: If you will return to the stand.

WHEREUPON—

RAYMOND K. PROCUNIER

resumed the witness stand and testified further as follows:

THE COURT: All right, Mr. Califano.

CROSS-EXAMINATION

BY MR. CALIFANO:

Q Mr. Procunier—is that it?

A No.

THE COURT: No, i-e-r.

BY MR. CALIFANO:

Q Mr. Procunier, you indicated that prior to the experience with George Jackson, you had a different policy than the one you have now at the prison in California; is that correct?

A Yes.

Q How long did you have that policy?

A It had been in effect for years. I can't tell you exactly the time. It was the whole time I was the Director and prior to that.

Q So at least from 1957?

THE COURT: Sixty-seven.

MR. CALIFANO: Sixty-seven, I am sorry.

[127] BY MR. CALIFANO:

Q Through some time after August of 1971?

A Yes.

Q Do you remember when you changed the policy?

A The latter part, the last week in August or the first part of September, I think it was.

Q And Jackson was killed in that month?

A In August.

Q Do you by any chance have the two policies, statements of those policies with you?

A No, I haven't.

Q Are they written down?

A Yes.

Q Was Jackson the most interviewed prisoner you had.

A No.

Q There was others who had more interviews over shorter periods of time?

A No. You asked two questions.

Q Right.

THE COURT: You have had some who were interviewed more on a longer period of time?

THE WITNESS: Yes.

BY MR. CALIFANO:

Q Over a longer period. Jackson, you said, was interviewed 33 times between August of 1970 and June of 1971?

[128] A Yes, at least.

Q At least, all right.

You indicated in your direct testimony that that created an administrative burden of some kind.

A Yes.

Q What was that burden?

A Well, we determined conservatively that one administrative burden is that when a man is in a lock-up status, to have him interviewed by the press or anyone else, it takes a half a man day for an interview.

Q For a half hour interview?

A Yes, or for an hour interview or for a 15-minute interview.

Q When you had your interview policy, where were prisoners interviewed?

A It depended upon the status of the inmate. If he were an inmate in a halfway house, outside the prison, it may be there. It may be on the street while he is on the job; or it may be, in a camp, it would be at the camp office or on the work crew. It would depend on the status of the inmate.

Q You recognize that 33 interviews over a ten-month period is less than one interview per week. Did you have anyone interviewed more often than that in comparable periods of time?

A No.

[129] Q Who would be the next most interviewed prisoner, or what kind?

A The next most interviewed, related to time, would be an inmate who was interviewed 66 times over a period of about 18 months, something like that.

Q Did you have a letter policy vis-a-vis communications with the press in California?

A I don't understand your question.

Q Are prisoners permitted to write letters to members of the press?

A Our policy—you are talking about mail policy, is that what you want to get to?

Q Mail policy, that is correct.

A Our mail policy in California varies among the institutions from the answer, no, to that question, to, yes, unrestricted. We deliberately do not have the same policy in each institution. We don't want Folsom to run like our narcotics hospital. Depending on the kind of inmate that the institution handles, the policy varies.

Q What is your letter policy, your mail policy at its most liberal vis-a-vis correspondence with the press?

A Well, it isn't only related to the press. The most liberal institution we have, they send letters on the same basis that you and I do.

Q Back?

[130] A They receive them on the same basis that you and I do.

Q With a prisoner in a prison that would be comparable to a medium security prison in the Federal system, in a prison of that kind in your system in California, what would be the letter writing policy between an inmate and the press?

A You will have to get specific by name of institution, because I leave it up to the warden-superintendent; but, generally, I can answer your question. Going out, it would be inspected and may or may not be read; and

coming back, it would be inspected and may or may not be read, depending upon the status of the institution. We have no institutions that handle only medium men, the same as the Feds. Within one institution, I want the freedom of the wardens so that they can have 100 per cent censorship with some inmates and no censorship with some inmates, depending upon the responsibilities they have demonstrated in their ability to handle mail problems.

Q Was Jackson permitted to write letters freely?

A What do you mean, freely?

Q Was George Jackson permitted to write to reporters?

A I don't understand what you mean by freely.

Q Was he permitted to write letters to reporters without censorship?

A No.

Q Or to friends without censorship?

A No.

[131] Q So his letters were read by the prison authorities before they went out?

A Yes. With the exception of mail to me or to an elected official in California, the Governor or the agency administrator, and at that time—we have changed it since that time, it has varied—we were allowing sealed letters to attorneys.

Q Sealed letters to attorneys at that time?

A Yes.

Q At that time you had a policy—correct me if I am wrong—where you could have an unsupervised interview with a prisoner if you were a reporter, with no prison official present, in the sense of being present within earshot, but you could not, if you were a prisoner, write a letter that would not be censored or at least read for censorship purposes to a reporter; is that correct?

A Correct. Under some circumstances.

Q But in the case of Jackson, as an example?

A Yes, I am sure that is true.

Q Do you remember by any chance when Mr. Jackson's book was published?

A About when it was, I do.

Q January of 1971?

A (Witness nods assent.)

Q Or shortly before then. Do you think that book had
[132] anything to do with his becoming a Big Wheel in
your prison?

A Yes.

Q Have you ever read that book?

A No.

Q It is a book of his letters.

A I am aware of what it is. I have had it reviewed
to me. I have never read it.

Q From prison.

In your present interview policy, as I understand, a
reporter may walk around the prison with one of your
wardens and interview inmates while he is walking around
the prison; is that correct?

A Yes, or with anyone else we designate, if we ap-
prove him.

Q If you approve them. If you approve them, do you
let them talk to them without supervision?

A It depends. I stated, it depends on the circum-
stances. For clarification purposes, though, it is possible,
certainly possible. It would be a—well, that is clear
enough.

Q Do you believe that George Jackson was the major
cause—that the publicity which attended George Jackson,
while he was a prisoner, is the major cause of the prob-
lems you have in the California prison system?

A The major cause? I don't know that.

THE COURT: I imagine that crime is the principal
[133] problem.

THE WITNESS: The people we got in the prison
are the principal problem.

MR. CALIFANO: Just one second.

THE COURT: What is in the Court's mind a bit
here, of course, is a question that may have nothing to
do with this hearing because the Court isn't sitting as a
legislative body and has no responsibility for drawing reg-
ulations. I have tried to follow a lot of the reforms and
progress that has been made in California, and I am

somewhat aware of the responsibility of that prison system.

What you portray to me is a sort of flexible approach to this problem.

THE WITNESS: Yes.

THE COURT: Where the individual warden is given judgment, depending on the nature of the problem at the moment, perhaps even the character of the particular newspaperman, the prisoner involved, the circumstances, the whole thing.

THE WITNESS: May I comment here?

THE COURT: You may in a minute, after I put in focus my question a little more for you.

Here what I am confronted with is an absolute flat policy laid down from the highest authority that writes a total bar across all of the aspects of the Federal system, including work release, every other kind of furlough release, every other [134] kind of release.

I am wondering whether in your experience you feel that absolutes of that kind, as opposed to the flexible approach that you have taken in California, is the best approach to the problem of press relations and corrections generally?

THE WITNESS: I much prefer the flexible approach. However, the one rule that we have with no flexibility is the rule we are discussing about individual requests for interview; and this was put in after a great deal of agonizing because of the very thing you are talking about. The best way for prisons to run, in my opinion, is to allow the warden or the man in charge of each institution, who can better assess than any director or anyone else the conditions of his institution and the kinds of inmates or the condition of the inmate at the time, the type of person that wants to interview him, for what purpose, to make a subjective evaluation of the total thing. However, in order to correct the situation that was getting out of hand, in my opinion, after consulting with the wardens and my staff, time after time, to avoid putting in the very policy we have, because this disturbs me greatly, we had to go to this. Our relationship with the press has always been fine. I would prefer not to have this rule. But I

have not been able, with the group of people I have to deal with in California—there are none better, as far as I am concerned, and that is probably biased—to arrive at a solution to control the [135] problem that we have been discussing here without that arbitrary rule.

Do you understand what I am getting at? This came after a great deal of agonizing because we tried to have modified versions of it and it wouldn't work.

THE COURT: I can see from your explanation why you need it in San Quentin, or something of that kind.

THE WITNESS: Yes.

THE COURT: But do you not have facilities within your system that are minimum security?

THE WITNESS: Yes.

THE COURT: Perhaps first offenders?

THE WITNESS: Yes.

THE COURT: Non-violent.

THE WITNESS: Yes.

THE COURT: That type of prisoner.

THE WITNESS: Yes.

THE COURT: Why did you feel, because of the Jackson situation, which I understand, that that had to be imposed with respect to this other category of prisoner?

THE WITNESS: My counsel suggested to me that—

THE COURT: You mean your attorney?

THE WITNESS: Yes.

THE COURT: I want to be sure you are talking about a lawyer.

[136] THE WITNESS: My attorney suggested to me—we were thinking along the same lines you are suggesting—that I had to make it apply to everyone or I would not be allowed the prerogative that you suggest here. That is the only reason I have it across the board.

THE COURT: In other words, as a correctional matter, putting aside legal considerations, you would tend to want to make the non-interview thing selective also?

THE WITNESS: Yes, sir.

THE COURT: And it is because of legal considerations that you put it across the board?

THE WITNESS: Yes, sir.

MR. CALIFANO: You have asked my questions, the last part of it.

THE COURT: Is there anything further?

MR. HANNON: I have no further questions to ask.

THE COURT: Thank you, sir.

MR. HANNON: May he be excused, Your Honor?

THE COURT: Yes, certainly.

MR. HANNON: Thank you very much.

THE WITNESS: Thank you.

(Witness excused.)

MR. KATZ: Mr. Alldredge, please.

[137] WHEREUPON—

NOAH L. ALLDREDGE

was called as a witness by the Defendants, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KATZ:

Q Mr. Alldredge, would you please state for the record your name and residence?

A Noah L. Alldredge, United States Penitentiary, Lewisburg, Pennsylvania.

Q What is your present position and title, please?

A Warden of the United States Penitentiary at Lewisburg.

Q For how long have you been a warden at Lewisburg, sir?

A Eighteen months.

Q I wonder if you would give His Honor, please, a resume of your previous experience in the correction field before you became warden?

A I started in the prison service, Your Honor, in May 1942, as a correctional officer. I transferred to the United States Medical Center at Springfield, Missouri, in 1953 as a lieutenant. I transferred to Texarkana, Texas Federal Correctional Institution as Captain in 1956. I transferred to El Reno, Oklahoma Federal Reformatory in 1957 as Captain. I transferred back to the United States Medical Center in 1959 as Captain.

[138] I came to the central office of the Bureau of Prisons, May, 1960, as Administrator of Correctional Services. I became Deputy Assistant Director of the Operations of the Federal Prison System two or three years later. In 1965, I returned to the United States Medical Center for Federal Prisons as Executive Associate Warden; and in September 1967, transferred to El Reno, Oklahoma, as Warden of that institution. August the 10th of 1970, I transferred to Lewisburg as Warden of that institution.

Q So you have continuously been with the Federal Bureau of Prisons since 1942?

A Except for World War II, I was in the service for 30 months.

Q Yes, sir. Since 1967, you have been a Chief Executive Officer of a Federal penal institution?

A Yes.

Q As Warden of Lewisburg, to whom do you report?

A To the Director of the Bureau of Prisons, Mr. Carlson.

Q I wonder if you might describe to the Court very briefly what type of institution Lewisburg is and what its various sub-installations are?

A Well, I am responsible, Your Honor, for three institutions: The penitentiary at Lewisburg, a minimum security farm camp consisting of 150 men located about one-half mile from the institution; and a 350-man minimum custody facility [139] located about 18 miles from the institution at Allenwood, Pennsylvania.

Q What is the total inmate population that you have under your supervision?

A It averages about 1850.

Q Are all of them sentenced prisoners?

A Sir?

Q Are they all sentenced prisoners?

A Yes, they are all sentenced prisoners unless when the Court will refer a person there for study, psychiatric study and recommendation, it would be 4208(b), or something like that.

Q What is the total number of staff that you have?

A 430.

Q What kind of institution is Lewisburg Penitentiary?

A It is a penitentiary; it is a walled penitentiary.

Q Is that medium security, maximum security?

A Lewisburg is classified as a medium security penitentiary.

Q Would you tell the Court what some of the offenses are for which you have people there serving sentences?

A Well, the men there have committed felonies ranging from stealing Government checks, interstate transportation of stolen securities, through and including murder, bank robbery. We have a large percentage of bank robbers. I can't give you a percentage but we have a large number of bank robbers.

[140] Q Is the prison open or closed to the public, the general public?

A It is closed.

Q Are you familiar with the policy of the Bureau of Prisons respecting contacts with inmates on the part of the media?

A Would you repeat that, please?

Q Are you familiar with the policy of the Bureau of Prisons respecting inmate contacts with members of the press and other news media?

A Yes, I am.

Q Are you familiar with the policy as it was revised this year?

A Yes, I am.

Q Have you continuously followed that policy?

A Yes, I have.

Q To what extent do you permit prisoners to talk with newsmen?

A Well, I interpret the policy, and I believe I am correct, that when a member of the press does visit the institution and wishes to tour the institution—and I always encourage them to do this—that if he wishes to talk to inmates that he may see on the compound or at work or whatever it might be, that, yes, he can talk to them.

Q For how long do these conversations generally go on?

[141] A Usually five minutes, or less; but it may be longer than five. Five or ten minutes. In my observation, it would be as long as five minutes or sometimes a little longer.

Q Do you permit interviews between members of the press and individual inmates?

A Not if there is—not specific named in advance inmates, no, sir.

Q So you distinguish between the formal interview and—

A Casual.

Q —a more casual type of conversation?

A Yes, I do.

Q In so doing, do you do this in reliance on the policy statement which was put out by the Bureau of Prisons to which you have referred?

A Yes.

Q On occasions when conversations have taken place between inmates and members of the news media, to the best of your knowledge, are these conversations monitored or listened to by a member of your staff?

A It is not our policy to monitor these visits, no. Ordinarily, if possible, I will have the same person or a very small group of individuals who do escort news media or other visiting visitors to the institution around about the institution and little or no attempt is made, as far as I know, I have, personally, never made any attempt to overhear the conversation [142] between the inmate and a member of the press or anyone else.

Q Now, Warden Alldredge, based upon your experience and background in the field of corrections, as you related it to the Court today, have you formed an opinion respecting whether or not newsmen should be permitted physical access to penal institutions for the purpose of conducting personal interviews with inmates?

A You are speaking here of inmates in private that they have named in advance?

Q Yes, sir.

A I have a very strong feeling or belief that this should not be done.

Q Would you tell the Court what that opinion is?

A Well, Your Honor, I think that the key is when a person is identified. I believe that this has a tendency—and it is an opinion and based on what experience I have had—to give him status he would not otherwise enjoy in the institution, and that most likely the person who would want to be interviewed or request an interview with the press would be a person who was seeking this kind of role. It is an opinion of mine that when you take this kind of interview and it becomes a published story, that this man would gain influence that he would not otherwise have within the institution, and that it would tend to create problems for the administration of that institution.

[143] THE COURT: Is that view a view you have if the reporter does not mention the name of the prisoner?

THE WITNESS: The name of the prison?

THE COURT: The prisoner. In other words, he says: I want to see John Smith, number so-and-so.

THE WITNESS: Yes, sir.

THE COURT: Under ground rules that he has a right to interview him but he will never mention John Smith's name.

Do you follow what I mean?

THE WITNESS: Yes, sir.

THE COURT: But he will use the information he gets for purposes of the story. Do you follow what I am talking about?

THE WITNESS: Yes, sir.

THE COURT: Do you feel that under those circumstances the same situation exists?

THE WITNESS: Yes, Your Honor, I do. I think that—

THE COURT: Then if that is so, why do you let these men write anything they want to to the press?

As you know, judges are among the favored communicants of prisoners, and while I would certainly agree with what has been said, that some letters are quite inarticulate and difficult, there are certainly some prisoners who

can sit down and write a most lucid, organized, detailed, perhaps somewhat legalistic and highly factual letter.

[144] THE WITNESS: Yes, sir.

THE COURT: Now, if people like that start writing to the press, signing their names, uncensored, and the press starts publishing those letters, my problem is to see why that type of communication is acceptable whereas if the same thing were said orally it would not be acceptable.

THE WITNESS: Your Honor—

THE COURT: Do you follow what I am talking about?

THE WITNESS: Yes, sir, I do.

THE COURT: I am not trying to disagree with you. I want your help.

THE WITNESS: I don't know whether I can or not, but I will try.

For years and through experience, we know that the prisoners have been able to write uncensored, sealed letters to judges, the Attorney General, the President of the United States, and numerous other officials; and in these letters, we know that they have been highly critical of the institution, they have been highly critical of their treatment and their program at the institution. They have been highly critical of the medical treatment, the entire gamut.

In my opinion, at least, it has proven rather strongly that a person writing a letter does not have the same impact as when this person is interviewed in the prison setting and identified to the inmate population, as you mentioned earlier [145] this morning, almost immediately by everybody in the institution.

THE COURT: They will know of the interview.

THE WITNESS: They know the interview is taking place and they know the story published would be regarding this individual and his attitude that he expressed toward the institution, good or bad.

THE COURT: If he says it all in the letter and the letter appears on the front page of the Washington Post, what about it? The Washington Post goes to your prison.

THE WITNESS: I can only state again my opinion that I do not believe it would have nearly the impact. For example, perhaps—

THE COURT: Is that because you feel that the attitude would be he wasn't important enough to have a newspaperman come to see him at the prison?

THE WITNESS: No, I think when an inmate is identified by the warden of the institution or identified by anyone of importance at the institution, for example, a Congressman comes in and wishes to see a certain person, he immediately gains something from this. If this is to be continued or if it was in a—

THE COURT: But the letter with his name and his photograph might well be on the front page of the Washington Post.

THE WITNESS: It very well might.

[146] **THE COURT:** And he would be identified in that regard.

THE WITNESS: He would certainly. This would have an impact, too. If his picture and a full-length story was put on the first page of the Washington Post, I agree with you.

THE COURT: But you permit that?

THE WITNESS: Yes, sir.

THE COURT: What I am trying to get at is, what is the rationale of the differentiation?

THE WITNESS: The degree of impact, I guess, because if—

THE COURT: The degree?

THE WITNESS: Yes, sir. I would like to say, it could be anyone. For example, a person who would be highly favorable to the institution might be the person interviewed, or some such person.

THE COURT: In spite of what you just said, I get letters favorable to the institution as well as unfavorable. I am sure some prisoners write favorable letters.

THE WITNESS: Yes, sir, they do. But, on the other hand, if it was a negative-type action in a personal interview, identifying a person by name, and this was published by name for this individual, I think it would have more impact in the institution than it would by letter.

THE COURT: In other words, a matter of degree?

THE WITNESS: Degree, yes, sir.

[147] THE COURT: Excuse me, Mr. Katz.

MR. KATZ: Yes, Your Honor.

BY MR. KATZ:

Q Warden Alldredge, how many prisoners at the present time do you have in your institution who are persons of considerable national interest?

A I am sure I can't name them all. I can't recall all, but I would guess at least ten or twelve at this time.

Q Would you name a few of them?

A Yes. Bobby Baker; of course, James Hoffa just went home. Martin Sweig, the Mayor of Newark, I can't recall his name.

Q Adanizio?

A General Turner. There are others. I can't recall the names offhand.

Q Has it been your experience with respect to some of these people that you have had a great deal of media interest in them?

A Yes.

Q How is this interest manifested?

A By telephone calls frequently requesting either a personal interview with the man or frequently wishing to do a documentary of his life, and in one instance a documentary regarding the political structure of a state and how it might have been built and how it did build.

[148] Q With respect to someone such as Mr. Hoffa, can you give us an estimate of the number of media contacts that you had in his case over this brief period of time?

A I would estimate, and it is only a guess, that as to Mr. Hoffa, I would be called a minimum of 150 times a year and sometimes maybe 200. In some instances I have been called at a particular time 50 times in one day regarding Mr. Hoffa from as far as England.

Q How does this compare with the media interest which is reflected in some of your other inmates not of the status of Mr. Hoffa?

A Well, naturally, there is a great difference. There is more interest in the person who is well known. And the other, usually the person of interest to news media then would be the person who has been involved in some kind of serious incident in the institution.

Q Would you foresee some effect upon discipline, possibly morale of your inmates if interviews were to be permitted and the result would be media contacts with different prisoners of a ratio such as that which you have related with respect to other types of media contacts in the past?

A You just about lost me, I am sorry.

THE COURT: He is just saying, if you permitted all of this, would it have created problems for you; and the answer is, obviously, it would. Fifty or sixty times a week, there [149] is nothing before me that suggests anybody was asking for anything of that kind.

BY MR. KATZ:

Q Are all the inmates permitted to write letters to media?

A Yes.

Q Are they presently being permitted to write letters to the media?

A Sir, restate that, please.

Q Are they presently, at the present time are all your inmates permitted to write to the press?

A Yes, yes.

THE COURT: In that connection, have you disseminated the policy that is in issue here to each of the prisoners by giving him a copy?

THE WITNESS: Your Honor, I know we placed it in each quarters because this is our policy.

THE COURT: You mean you posted it in each quarters?

THE WITNESS: Yes, sir, and actually I believe we put out 1500 copies of them.

THE COURT: Put them out to everybody?

THE WITNESS: Yes, sir, to everybody.

BY MR. KATZ:

Q And this correspondence goes out through the prisoners' mail box?

[150] A Yes, my secretary handles this sealed mail herself. It is picked up and brought to her.

Q Is any of this outgoing mail examined, read or inspected in any way?

A To attorneys or to news media, you mean?

Q To the news media?

A No, it is not. It is placed in a Government franked envelope with a letter from me wrapped around it, which states, in effect—I can't recall the exact wording—this letter has not been read, it has not been censored; and that if there is any information in it that they would wish to question me or the Director of the Bureau of Prisons about, please do so. Something to that effect.

Q The prisoner places his letter in an envelope—

THE COURT: It is handled just like judicial mail?

THE WITNESS: Precisely the same thing; and this is why I believe it is very acceptable to the inmate population.

BY MR. KATZ:

Q The prisoner seals his envelope and the sealed envelope is placed in the Government franked envelope that is sent outside?

A Yes.

Q Are members of the press being permitted to visit Lewisburg Penitentiary?

A Yes, sir.

[151] Q Are they presently being allowed to hold conversations with the inmates within the meaning of the policy statement as you have explained it?

A Yes, they are.

Q And you are presently operating normally as you would under the provisions of the policy statement?

A Yes, I am.

Q Do you know the Plaintiff in this case, Mr. Bagdikian?

A Yes, I do.

Q If you see him here in the courtroom, please point him out.

A I know Ben (indicating).

MR. KATZ: Let the record reflect that Warden Alldredge identified Mr. Bagdikian.

BY MR. KATZ:

Q How many times has Mr. Bagdikian visited Lewisburg?

A Since I have been there, twice.

Q Do you remember the dates of those visits?

A No, I do not.

Q Could you approximate the dates of the visits?

A I only remember really the month. He visited, you know, just a little while ago in March. I can't recall the date. I didn't think to even try to remember that. And the other time, I can't say really. It was—

Q Last year?

[152] A —within the last six months or the last three months. That is the best I can do.

Q At any time when Mr. Bagdikian visited Lewisburg, did he ever conduct a personal interview with an inmate?

A You mean personal, private, unsupervised interview?

Q Yes, sir.

A No, he did not.

Q Of these two visits, did one come after this litigation was filed?

A Yes.

Q And one at some time—

A Prior to.

Q —previous. Was Mr. Bagdikian treated in the same way on both occasions?

A I believe so.

Q Did Mr. Bagdikian interview you?

A Yes.

Q On one or both occasions?

A Both occasions.

Q Did you give Mr. Bagdikian your full cooperation on both occasions?

A I believe I did.

Q If a prisoner should want to obtain the assistance of a fellow inmate in composing a letter to the news media, is this permissible?

[153] A Yes.

Q After the policy statement, the February policy statement permitting correspondence with the media went into effect, did you notice a significant amount of such correspondence?

A Yes, sir.

Q Can you give us an estimate?

A I only counted one day, 88 went out one morning to various members of the press.

MR. KATZ: Would you indulge me a moment, Your Honor.

THE COURT: When a Congressman comes to Lewisburg and he says he wants to have a private conversation with an individual inmate, do you let him?

THE WITNESS: Yes, sir.

THE COURT: Why do you distinguish between him and Mr. Bagdikian?

THE WITNESS: Well, I mean, I am not very familiar with this area, Judge, but as I understand it and believe that the Congressman has control over the institutions, both in the legislative area, and a kind of supervisory role of the prison, itself. I mean, this is an opinion, not—

THE COURT: Well, if the Governor or the Lt. Governor of Pennsylvania comes, do you let him?

THE WITNESS: No, I would not.

THE COURT: It would just be a Federal official?

THE WITNESS: A Federal official. For example, any [154] judge, as you well know, or any United States Attorney in this area, yes.

THE COURT: I have always been permitted full interview privileges when I have gone to prisons.

THE WITNESS: Yes, sir.

THE COURT: I was wondering about Congressmen, particularly; and you permit them to have such interviews?

THE WITNESS: Yes, sir.

BY MR. KATZ:

Q Warden Alldredge, when Mr. Bagdikian visited Lewisburg recently, did you ever tell Mr. Bagdikian, when he held his group discussion conversation with the inmates, as he related earlier, that a member of the staff would have to be there and would listen to what was being said?

A No, I did not. In fact, I did tell Mr. Bagdikian I knew he would be wanting to talk to certain men as we walked around the compound, as he did tour the institution, and he would be able to discuss, you know, whatever he wished to with them.

I think Mr. Bagdikian would agree with me, when I personally went with him on his first tour, that I made no attempt to remain close to him and see that he could not, you know, talk privately with prisoners.

MR. KATZ: Thank you.

THE COURT: Do your prisoners have any outside contact [155] through a radio station or through a newspaper or anything of that kind?

THE WITNESS: You mean by appearing on it, Your Honor?

THE COURT: For instance, do they have a newspaper that is disseminated outside the prison?

THE WITNESS: We have our own.

THE COURT: I know you have a prison newspaper.

THE WITNESS: A prison newspaper.

THE COURT: Is that paper allowed to be disseminated outside of the prison?

THE WITNESS: It is not mailed. I think, only for economic reasons. At one time most of the institutions, the Federal institutions, and some Federal institutions now permit them to be mailed to their correspondents. We don't at Lewisburg and it is primarily for economy.

THE COURT: There is no prohibition?

THE WITNESS: No, sir.

THE COURT: So that they can write their own newspaper and send it out?

THE WITNESS: It is sent to all institutions; and, too, we have had the press in our institution quite frequently and we have a very active program of outside

people coming into the institution through other organizations.

THE COURT: Do many of your prisoners go out and talk to civic groups?

[156] THE WITNESS: They have, yes, sir.

BY MR. KATZ:

Q Are the prisoners permitted to receive newspapers and magazines?

A Yes, yes.

Q Are these censored in any way?

A They are not censored in any way. The Bureau regulations do permit the warden of an institution—if a magazine would be inflammatory, he must justify this in writing and make it a part of the record and send a copy of this to the Director of the Bureau of Prisons for, you know, whatever consideration he would give to the decision of the warden.

Q Are the prisoners permitted to watch television?

A Yes.

Q Is this without restriction?

A Yes.

MR. KATZ: Thank you.

Your witness.

CROSS-EXAMINATION

BY MR. CALIFANO:

Q Warden Alldredge, you indicated, I think—I tried to write it down as you said it—that the key is—with respect to the problems that a warden has with interviews by newspaper reporters of any of his inmates, I think your words were, the key is when the person is identified and when it [157] becomes a public story. Is that correct?

A Generally the way I remember it, yes.

Q Why do you then not permit a reporter to interview a prisoner where he agrees not to identify his name?

A Well, I can only say that I believe that the prisoner is identified immediately throughout the institution by

the inmate group, and these are the people I am concerned with.

Q How is he identified, because he goes back to the inmates and says he talked to a reporter?

A Well—

THE COURT: You haven't been near many prisons.

THE WITNESS: That is the only thing I can say. If you came to the institution, everyone in that institution within five minutes would know there was a stranger who had walked up to the front door and requested to see something or somebody.

THE COURT: I dare say if Warden Alldredge went in to work with one shoe untied, it would be known all over the place before he got to his desk.

THE WITNESS: That is very true.

BY MR. CALIFANO:

Q You agree with the letter policy in the Bureau of Prisons statement, I take it?

A Yes, I do.

Q You have no problem with prisoners being identified as a result of the correspondence they write?

[158] A No.

Q To newspapers?

A I have no problem with this because we have not really had a problem in the many years that this has been done with Government officials and people outside our own agency.

Q You agree with the photograph policy in the Bureau of Prisons statement, the regulation?

A If you mean that the prisoner has a right not to be photographed, yes, I do.

Q Also that pictures can be taken by visiting press and if the prisoner agrees they can put his picture in the paper?

A I prefer to put it the other way, that he has a right not to be photographed if he doesn't want to.

Q If he is willing to be photographed, they can take his picture?

A Yes.

Q Put it in the newspaper?

A Yes.

Q And identify him in that picture?

A Yes.

Q That doesn't create the same kind of a problem that a personal interview does for you?

A It would not, as far as I am concerned, in my judgment.

Q I wish you could give me a reason why that is so. [159] I always thought a picture was worth a thousand words. Maybe that is not true in prisons.

Can you identify the reason why it is less difficult for you to deal with the man when his photograph is on the front page of the Post, or when his photograph is on the evening news on television that was taken by a reporter?

A There is a great deal of difference, and I don't know that I can explain it. There is a great deal of difference between a person having a photograph made which is a part of a letter, which would go out to a member of the press, than having that member of the press there in a person-to-person private interview with this particular inmate.

There is a great difference, and it does have an impact on the institution that the other would not have. This is the fact. I can't, you know, probably prove that.

Q The photographs don't have to go out in letters. Are you saying—

A No, they can be taken then or however they might photograph him.

Q Taken by a photographer?

A Yes, I believe Mr. Bagdikian's photographer took numerous pictures throughout the institution, including, of course, some of our worst quarters that I have at Lewisburg.

Q Did you have any trouble because of the stories that he wrote of your institution in the series he wrote? [160] A I did not read all of the articles.

Q About your institution?

A Mr. Bagdikian made very little reference to Lewisburg in his articles.

Q But the references there created no problems for you with your inmates?

A No, there was very little about Lewisburg.

Q You indicated that you had many requests for Bobby Baker. Have you had a lot of requests for him this past month or so?

A No, since my policy is well known.

Q So nobody calls?

A No, people will call. Particularly certain papers that would be interested in a given person for certain reasons, they call, and they don't call back very often. They accept the policy.

Q How many times have you been called about him in the last month?

A About Bobby Baker? None, or none to my knowledge. I will put it that way. Somebody else might have been called.

Q What about Martin Sweig? Have you had a lot of calls about him?

A No.

Q Have you had a lot of calls about General Turner?

A Not for quite some time.

[161] Q How about Mayor Adanizio, the man whose name you could not think of?

A You know who I mean?

Q Yes.

A I had several calls about him at the very beginning, wanting to do certain stories.

Q Right after he arrived?

A Well, for a period of—I can't say how long.

Q In the last—

A In the last month, I have had none.

Q How many reporters have requested interviews with the members of the negotiating committee at Lewisburg during the past strike?

A How many?

Q Yes.

A One.

Q Is that Mr. Bagdikian?

A Yes, Mr. Bagdikian.

Q Do you see any distinction in terms of the notoriety problem of a Bobby Baker or a Jimmy Hoffa, shall we say, when they first arrive, and a reporter requesting an interview about something that is going on in your prison or has gone on in your prison?

A I would have been very concerned and most reluctant, and would have believed and believe personally that, in my [162] judgment, this would have created and could very easily have created a much more dangerous situation than I did have if Mr. Bagdikian had been permitted to interview these men privately and use them for news reasons.

Q If he had been able to interview any of them privately?

A Privately and specifically by name, yes.

Q Right. If he had been able to interview them as a group, would that have presented the same problem to you?

A Yes, it would have.

Q Suppose one of the names came up on the random selection?

A He would have had that opportunity, yes.

Q That wouldn't have concerned you?

A Yes, it would have concerned me, yes.

Q What is the difference? Is the difference that the shot is a 150-to-1 that they won't come up in random selection, rather than giving him one of them to talk to?

A Precisely.

Q Do you feel that it is an institutional emergency at Lewisburg now?

A No, as far as the work stoppage, no.

Q No. Do you ordinarily permit private, unsupervised interviews of virtually unlimited length or varying length at the discretion of the reporter of groups of prisoners as you did Mr. Bagdikian?

[163] A You mean on random selection? I have done this before.

Q You have?

A Yes.

Q How often do you do that?

A Maybe two other occasions since I have been at Lewisburg.

Q You have been at Lewisburg how long?

A Eighteen months.

Q Do you remember what those occasions were?

A No, I don't even recall for sure that they were members of the news media. It might have been someone else who had an interest in corrections that wished to speak to a group of inmates and we selected a group for them to speak to.

Q Do you remember ever doing that before for a member of the news media?

A I can't say that I do.

Q Did you check with Mr. Sarlson before you did this or after you did it or while you were doing it, to seek his approval?

A I told Mr. Carlson—I cannot recall whether it was before or after—that I planned on offering Mr. Bagdikian the opportunity to talk to, in a sense, an unknown group of prisoners that would be randomly selected, yes. I don't recall whether it was before or after.

Q The directive indicates that he is the one with [164] authority to make exceptions. Has he delegated that authority to you, exceptions to this regulation?

A My interpretation of the policy is that a group of inmates who are not identified speaking to a newspaper reporter is within the purview of the policy; that it would be proper because it is a conversation and they are not identified in the article as written later. Just a give-and-take conversation of a few minutes with a reporter.

Q Maybe you can enlighten us on that. You say you consider that a conversation, as distinguished from an interview?

A Well, I think it is just semantics, the matter of interview as opposed to conversation. I think they are very similar.

Q Could you tell me the difference?

A To me, the difference between an interview and conversation?

Q Yes, between a conversation and an interview?

A My distinction, frankly, is that of identifying them in advance by the reporter, as to who he wished to speak to in private.

THE COURT: I take it there is an element of time, too?

THE WITNESS: Yes, sir.

THE COURT: The phrase the Plaintiff used is, "interview in depth," which I take it is something that involves an [165] hour or two hours, as opposed to five or ten minutes chat in the yard.

It seems to me those are the two things that emerged from the testimony. Many of us would think anything was an interview when a newspaperman was involved. From the newspaperman's point of view, he is talking about a discussion in depth.

Isn't that what you are talking about, Mr. Califano, in your papers, when you talk about an interview? You are talking about a chance to really explore with a man in private in detail, aren't you? Isn't that what your feeling is about it?

MR. CALIFANO: Yes, that is correct.

THE COURT: It doesn't make any difference whether you call the other an interview or chat or conversation; from your point of view, it is not an interview, as I understand it.

MR. CALIFANO: What I am trying to discover is the prohibition against interview and how the Warden interprets the regulation; and I think I have an understanding of it now.

BY MR. CALIFANO:

Q Identification, in your mind, is the key?

A Strong point.

Q The identification of the prisoner. Did you explain to Mr. Bagdikian what conversations about institutional facilities programs and activities meant when you talked to him?

A Yes.

Q What did you tell him?

[166] A In general, we covered this part of the policy statement. I offered Mr. Bagdikian a copy of it; and he

did not wish to take it because he said he was familiar with the policy statement.

Then we discussed the paragraph relating to facilities, programs and activities; and he brought out about the work stoppage being an activity; and I said, in effect—I can't recall precisely my words then—regarding this not being a regularly-scheduled activity of the institution; but that he and I both knew that he would be talking to inmates about the work stoppage if he toured the institution, as I had asked him to do.

In fact, I think the words were: You will walk out this room, the first inmate that you see, you will be talking to him, if you wish, and I am sure that he will discuss with you the work stoppage.

Q But, as you ordinarily interpret "activities," that wouldn't fall into it, as you interpret it?

A It just so happens, as I interpreted it, the work stoppage would be a past activity of the institution and even though I would not encourage any reporter to talk about it, I am sure that they would.

Q Could you explain to me why it would be seriously disruptive for Mr. Bagdikian to interview privately a half dozen or so inmates of his choosing who are not public figures?

[167] MR. HANNON: I object to the question because I don't believe the witness has testified that it would be seriously disruptive. He is putting something in that the witness hasn't testified to.

THE COURT: Disruptive, not seriously, but disruptive.

MR. HANNON: He said seriously disruptive.

THE COURT: Well, leave out the "seriously."

BY MR. CALIFANO:

Q Disruptive? Leave out the seriously.

A Restate your question, please.

Q Could you explain to me why it would be disruptive and precisely how at Lewisburg for Mr. Bagdikian to interview, say, a half dozen or so inmates who were on the negotiating committee or otherwise involved in more than a passive way in the strike?

A Well—

Q Today, tomorrow?

A May I explain it? I may not explain it to your satisfaction, but in my judgment, the fact that he would be interviewing men who were the leaders, they would be the leaders of this work stoppage, and the men who negotiated with the institution, if they had recognized myself as being permitted to negotiate with them, if he had interviewed these individuals, I think it would have had a tendency in the institution to have either re-ignited the work stoppage or caused [168] other difficulties for the institution.

Q On what do you base that, Warden Alldredge?

A Experience is all. I can't say that it would have happened. I can just say, in my judgment, I think it would have endangered the institution.

Q Have you had work stoppages before in Lewisburg?

A Yes.

Q Have reporters interviewed people involved in them?

A They didn't in this first instance, no, nor in the second instance either.

Q How many have you had, one before this one?

A At Lewisburg, yes.

Q When was that?

A I arrived in Lewisburg August the 10th, and—

Q August 10 of what year?

A —1970, and August the 15th, 1970, I believe that there was a work stoppage similar to this one.

Q As long as this one?

A No; no.

Q How long was it?

A It lasted something like two days, three days—maybe two days, I think.

Q Did reporters come in after that work stoppage and interview people?

A To the best of my knowledge, no one asked.

[169] Q No one asked.

Am I clear that whomever a reporter interviews at your prison, as you understand these regulations, provided it is not someone he requested to interview in ad-

vance, he may talk to him privately outside the earshot of any staff official at the prison?

A As he goes through the institution, yes.

Q If in going through the institution he meets a prisoner he wants to talk to for more than five minutes or more than three or four questions—you said five minutes or less—will you permit him to do that?

A Routinely, I would walk away from the person who is touring the institution, if he indicates some desire to talk to an individual. Yes, I would let him have this privilege. I have done it many times.

Q You would. So if Mr. Bagdikian went to Lewisburg tomorrow, for example, and he wanted to interview a prisoner for 15 minutes or half an hour, alone, out of earshot of any member of your staff, provided he did not ask for his name in advance, you would let him do that?

A No, I would not. We were talking—

Q As he was walking through?

A Five or ten minutes as he was walking through the institution.

Q Only five minutes. I said five or ten.

[170] THE COURT: If he bumped into him.

BY MR. CALIFANO:

Q If he bumped into him?

A Actually, if he stopped and talked to every man that he met for 30 minutes, it would be a very difficult thing for me to tour the institution with him.

Q Have you ever thought, Warden Alldredge, about any less restrictive means of handling press interviews than the ones that are now in the Bureau of Prison's policy statement?

MR. HANNON: I object to the question, your Honor.

THE COURT: Sustained.

MR. CALIFANO: One second.

BY MR. CALIFANO:

Q You said that the difference between an interview and a conversation was also the length of time involved?

A I can only say I have interpreted it to be a five- or ten-minute casual contact as the man tours the institution.

Q Do you know how long Mr. Bagdikian talked to the prisoners?

A I think approximately—he started with ten men and it was less than an hour.

Q About 45 minutes?

A Yes. I considered that he was talking to ten people.

Q So you consider that a conversation?

A Yes.

[171] Q The larger the number of people, the longer it can be and still be a conversation?

A Well—

THE COURT: I think we are just getting altogether too argumentative, Mr. Califano. You have lost track of your pleadings to some extent.

This gentleman has given you a generalized interpretation of the regulation. He didn't draw it. He works with somebody else.

MR. CALIFANO: Fine.

THE COURT: I think we ought to move on.

MR. CALIFANO: That is all.

MR. KATZ: No redirect, Your Honor.

THE COURT: All right, thank you, Warden.

THE WITNESS: Thank you.

(Witness excused.)

MR. KATZ: Mr. Norton, please.

THE COURT: How many more witnesses do you have?

MR. KATZ: We have two more, Your Honor, Mr. Norton and Mr. Carlson.

THE COURT: Very well.

WHEREUPON—

JOHN J. NORTON

was called as a witness by the Defendants, and after having been first duly sworn, was examined and testified as follows:

[172] DIRECT EXAMINATION

BY MR. KATZ:

Q Would you state your name and address, please?

A John J. Norton, 33 Pembroke Road, Danbury, Connecticut.

Q Are you employed by the United States Bureau of Prisons?

A Yes.

Q What is your official title?

A I am Warden of the Federal correctional institution at Danbury, Connecticut.

Q For how long have you been the Warden at Danbury?

A About two and a half years.

Q Would you just briefly recapitulate your experience prior to that in the field of corrections?

A Well, I started as a correctional officer at Englewood, Colorado—these are all Federal institutions—and—

Q What year was that?

A 1947, May 1947. I transferred into the parole office at Englewood in approximately 1954. I went to Ashland later that year or early '55 as a parole officer. In '56, I went to El Reno, Oklahoma, as Chief of Classification and Parole. In '58, I went to Petersburg as Associate Warden; back to Ashland as Warden in '60. I went to Sandstone, Minnesota as Warden in '65; and Danbury in the fall of '69.

Q So you have been the warden of one institution or [173] another for over ten years?

A Yes.

Q Would you give us a brief capsule description of the type of institution you have at Danbury?

A Well, we are a Federal correctional institution, which is actually a classification of, generally, repeaters. We have very few—although, I will contradict myself as I go along. With the exception of such types as Selective Service, and whatnot, most of our men have been involved in offenses of one kind or another many times. Generally speaking, they are not the aggressive penitentiary type and are not serving lengthy sentences, by and large, under five years. However, with our present-type population, there is a good deal of overlapping and it is very difficult to make a clear-cut classification in Federal correctional institutions as there once was.

Normally, I think it would call for 24 years on up, but we do have quite a few kids under 24.

Q What is the total inmate population at the present time?

A Approximately 730, 734.

Q How many members of staff do you have?

A About 180 full time and we have some part time.

Q Is your institution open to visitation by the public generally?

A Generally is a pretty broad word, but, yes, we have [174] certainly quite—

Can I double back a little?

Q Yes.

A We are a correctional institution, so there is no out-and-out freedom, but we have many many visitors coming and going, programs, and particularly in our narcotics unit.

Q But a member of the public generally having no particularized business cannot just come in?

A That is correct.

Q Are you familiar with the policy of the Bureau of Prisons governing contact between inmates of your institution and the news media?

A Yes.

Q And you are familiar with that policy as it was changed in February of this year?

A Yes.

Q To what extent do you permit contacts between, physical contacts between the media and your prisoners?

A Well, as has been said many times here today, we try very very hard to encourage total tours of the institution, to see the entire institution.

Should I go through this contact?

THE COURT: Is it fair to say, Warden Norton, that your view of the matter is much the same as Warden Alldredge's?

THE WITNESS: Much the same. I think all of us are [175] still working at the distinction between conversation and interview; and mine, frankly, was two-minute duration as distinguished from five or ten. But I think as we go along, we are going to be more flexible.

BY MR. KATZ:

Q On what basis do you distinguish between an interview, as that term is described in the regulations, and other physical contacts, such as what we have called here conversation?

A My concept of conversation is, as I say, two minutes—we don't hold a stop watch—two or three minutes as we are moving about, a chat, whereas the interview, and I am not borrowing the Judge's word because I think I used it with Mr. Bagdikian, is an in-depth dialogue, to get away from conversation for a minute.

The distinction between conversation and interview is a few questions almost on the move, whereas an interview is sitting down at length with a named individual.

Q How is it that the conversations which have been held in your institution between the inmates and the media come to get started?

How do they get together, the member of the press and the inmate?

A By moving around the institution.

THE COURT: On tours?

THE COURT: On tour?

[176] BY MR. KATZ:

Q Do you permit prearranged discussions between a member of the press and an inmate?

A Not with—no.

Q When conversations are held between members of the press and inmates, do you have any policy respecting whether or not a member of your staff must listen to it?

A I think this is where considerable confusion comes in. We have a policy that a member of the staff will accompany whoever is going on tour.

Q What is the purpose of this?

A For general supervision, particularly in recent times when we are still in somewhat of a stress situation.

Q Is this staff member supposed to listen to the conversation?

A No, he doesn't have to listen to everything. Normally, because we are moving, he heads it; but the two- or three-minute kind of rule, if I can use that, is still available.

THE COURT: In other words, what you are talking about is somebody who will take a member of the press through the dining room, the mess hall, and he says to an inmate, How is the food? Is it better or worse than the last place you were in? He may listen to that?

THE WITNESS: Right.

THE COURT: But if he wants to pull off and talk for [177] a couple of minutes, you will let him, I take it?

THE WITNESS: Right. But the distinction is a lengthy talk.

THE COURT: Right. That is the atmosphere I have gotten from all the testimony.

BY MR. KATZ:

Q Based, Warden, on your experience in the field of corrections, as you have related it to the Court, do you have an opinion, in your professional judgment, as to whether or not there should be permitted personal, private interviews between members of the press and inmates?

A Yes, I believe very strongly that the impact of a reporter coming in builds up the ego, if you will, or leadership of individual inmates, yes.

Q It is your opinion that this should be prohibited?

A Yes.

Q Do the inmates of your institution receive newspaper and magazines from the outside?

A Yes.

Q Are these censored at all?

A No, only in the sense that Mr. Alldredge said. If we got one that we think is going to blow the roof, then we take note of it. But not in a sense of—

THE COURT: Did you shut off during Attica?

THE WITNESS: No. We are in the New York area and [178] every television set—

THE COURT: That is why I was asking. You didn't even shut that off, did you?

THE WITNESS: Oh, no, no. We have three New York channels right in the institution. Every living quarters has a T.V.

THE COURT: True.

BY MR. KATZ:

Q They are permitted to watch television without restriction?

A They vote for it. A committee votes for, I believe it is a week's period. In any case, several days. They choose from the T.V. Guide.

Q That is a committee of inmates?

THE COURT: Whether they want to listen to the F.B.I. or something else?

THE WITNESS: You will be surprised, sometimes they have passed up pro football for some program. But that is unusual; mostly it is sports.

BY MR. KATZ:

Q Do you have any inmates in your institution, either now or in the recent past, who have been persons of national prominence?

A Yes, I have.

Q Would you name some of those for the Court?

[179] A Past or immediate?

Q Both.

A You want at Danbury?

Q Just at Danbury.

A Well, the Berrigan Brothers are pretty well known. I have had them. Neither one is there at this time.

Q When were the Berrigans there?

A They came in August of 1970 and one of them went out to the Harrisburg trial in January; and the second one was paroled, I believe, late February, recently.

Q Was there a great deal of interest manifested by the media in the Berrigans?

A Tremendously.

Q And what forms did this interest take?

A Oh, just about all forms. You are talking media now?

Q Yes.

A Requests for interviews, requests for stories, requests for sermons, just an enormous amount of requests.

Q Could you give us an idea of how many?

A No, except that there were many days I had several requests. It depended on other events where their names were being mentioned in the press, and topical events. Some days there would be nothing; other times, there would be many.

Q Did you feel that if personal interviews were permitted with the Berrigans that this could create a difficult [180] situation?

A Yes, I felt very strongly.

Q Do you have any other inmates at the present time who are well known nationally?

A You know, it is one of those things where you have to stop and think. It is a little difficult. I have Johnny Dio, who is pretty well known around. But over the course of two and a half years, we have had several and I really have to start checking back.

We have many who are perhaps not so nationally known but who are the center of attention in their own back yard. I can't think of his name, but the Mayor of a New Jersey city, and it is not Noah's friend. We had seven and eight calls a day about him, because it was rumored that he had made parole at the same time that he was involved in something else in the local town; and it was a constant barrage of inquiries on him.

Q Are inmates of your institution being permitted at the present time to write to the media?

A Yes.

Q No restrictions on this?

A No.

THE COURT: Did you disseminate the policy in any fashion throughout the institution?

THE WITNESS: Yes. We disseminated it to every living quarters and the two or three principal bulletin boards, such [181] as the one in education, which is read, not by all, by any means, but by a large cross-section; and we posted one in the law library. We have a law library.

BY MR. KATZ:

Q Have prisoners been permitted to receive mail from the media?

A They are permitted. I can't recall coming back.

Q Are members of the press being permitted to visit your institution at the present time?

A Under the policy statement, yes.

Q And they are being permitted to hold conversations with inmates, as we have defined these terms, correct?

A Yes.

Q During the recent incidents at Danbury, were any restrictions place on any of these?

A Yes. We invoked—I don't know if we formally did—that phrase in the policy statement which permits us to declare an emergency.

Q Do you know the Plaintiff, Mr. Bagdikian?

A Yes.

Q Do you see him here today?

A Yes, the second man there (indicating).

Q Did Mr. Bagdikian visit your institution?

A Yes.

Q When did Mr. Bagdikian visit Danbury?

[182] A I don't remember the date but it was the day after, I believe, his most recent visit to Lewisburg. I believe it was a Wednesday, last week, I think.

Q It was last week?

A A week ago yesterday. I would have to double check the calendar, but I believe that is right.

Q Would you tell the Court what transpired during Mr. Bagdikian's visit.

A Well, Mr. Bagdikian arrived about 11:00 o'clock, and we sat in my office, I would guess, for an hour, possibly a little longer.

Mr. Bagdikian's prime interest was to talk with the members of the original negotiating committee, whom he believed were in segregation in some part. We chatted at length on that part of it. We tried to encourage him to go about the institution. He explained that was not his purpose at this time.

We discussed a little bit of his Lewisburg visit and we went for a brief lunch. On the way back, I had to go for a phone call. I should have explained that the "we" included Mr. Benson, Charles Benson, my Associate Warden.

Mr. Bagdikian did go through one quarters on the way back and the dining room. The meal was over at this time, of course. And then we chatted for possibly another hour back in my office, at which time we again tried to persuade him to take a tour of the institution. That is about it. He left about [183] 2:30.

Q Do you know whether Mr. Bagdikian talked to anybody, any of the inmates?

A I did not see him, personally, but my understanding with Mr. Benson is he talked with two or three, yes.

Q Did you ever tell Mr. Bagdikian that any conversations he had with inmates would be listened to by members of your staff?

A When we returned from the dining room, we talked about this in particular, and we had trouble with conversations, interviews, and whatnot. But we made it clear, I hope, that if he wanted to go out in the compound—I think he introduced the point that he had been talking with one inmate, and suppose that inmate had asked to have Mr. Benson step aside; and we said, yes, certainly, for at least two or three-minute kind of thing.

Q So you never told him that any conversation he had with an inmate would be listened to?

A Whatever I might have said earlier, it was perfectly clear at that time. I want to make this clear because there may be some confusion. In the morning we were talking in very general terms and the heavy emphasis

was on Mr. Bagdikian's wish to interview individually and our wish to have him at least see the institution before we got into any other areas.

Q Do you permit prisoners to help each other in preparing [184] letters to the news media?

A Do I help them?

Q No, do you permit prisoners to help each other?

A Oh, yes. We have a small but a number of Puerto Ricans who can't read and write English and they are certainly allowed to have a fellow-inmate help them.

THE COURT: You have a lot of letter writers there who help the other men for cigarettes.

THE WITNESS: Yes, a lot of writ writers who help each other, too.

THE COURT: Surely.

BY MR. KATZ:

Q Since the policy statement came in permitting written letters to the news media, do you know whether or not that has been extensively used?

A I know that many letters have gone out. I don't have the exact count.

Q Are those letters that go out from Danbury to the media censored in any way?

A No, they are what we call P.M.B., prisoners' mail box, sealed and put in a separate box. Only one person picks it up and brings it over to my secretary, who attaches a transmittal letter, which just explains the rules of the policy statement; and it goes unopened.

MR. KATZ: Your witness.

[185]

CROSS-EXAMINATION

BY MR. CALIFANO:

Q Warden Norton, how many reporters have been at Danbury since the work stoppage and asked to see the people that Mr. Bagdikian asked to see?

A How many—you have two questions, at least, I think.

Q How many reporters—

THE COURT: The question is, has any other newspaper reporter wanted to see the people involved in the leadership of the work stoppage?

THE WITNESS: Yes.

THE COURT: How many?

THE WITNESS: I really don't know.

BY MR. CALIFANO:

Q How many have come to Danbury?

A One has come to Danbury.

Q Who?

A A local reporter.

Q A local reporter there; that is it?

A That is it. However, during the stoppage, many did. I talked to them, and that was it. There was no follow-up at that time.

Q But at the present time, the only one seeking to go there is Mr. Bagdikian; is that correct?

A That is correct.

[186] **Q** Were the Berrigans Big Wheels at the prison?

A Yes.

Q Even though—

A I guess we are in agreement about Wheels. You can go around and around for months on that one.

Q I have been taking my education in prison terminology today. So I think so.

A Maybe I had better qualify it. They would certainly have liked to have been and in a sense that everybody knew who they were, they commanded some attention.

Q Even when you had a policy that did not permit even correspondence outside? They were there before this policy was changed?

A Correct.

Q So with total restriction on their access to the media, they were still Big Guns or V.I.P.'s, or what-have-you, or notorious people and well known?

A Notorious, certainly, yes, in the sense that it is highly publicized.

Q You made one statement I just want to make sure I understood. You said that you wanted Mr. Bagdikian to "see the institution before we got into any other areas."

Did you mean to imply by that if he had seen the institution, you would have then let him see these prisoners that were on the negotiating committee?

[187] A No, not individually, no.

Q I didn't think so.

I have no further questions.

MR. KATZ: No redirect.

THE COURT: Thank you very much, sir.

(Witness excused.)

MR. HANNON: May we have five minutes before we call Mr. Carlson?

THE COURT: Yes, I think it would be a good time to take five minutes.

(Whereupon, a short recess was taken.)

MR. HANNON: We will call Mr. Carlson, if Your Honor please.

WHEREUPON—

NORMAN A. CARLSON

was called as a witness by the Defendants, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HANNON:

Q Mr. Carlson, would you tell us your name, please, and your present responsibility with the Government?

A Norman A. Carlson, Director, Federal Bureau of prisons.

Q Of the Department of Justice?

A Department of Justice, that is correct, sir.

Q This is the Federal system that we are talking about?

[188] A That is correct.

Q How long, Mr. Carlson, have you been connected with the penal institutions of any sort?

A I have been with the Federal Bureau of Prisons for 15 years. For two years prior to that, I was with the Iowa State system.

Q Would you relate to us your experience in the penal institutions?

A Yes, I started out as a correctional officer in the Iowa State Penitentiary in 1956, while I was in graduate school. After graduating, I went back to work for the Iowa State Penitentiary for approximately a year. In 1957, I joined the Federal Prison System at Leavenworth, Kansas; was a parole officer there two years; went to the Federal Youth Center at Ashland, Kentucky, as a case work supervisor for approximately two years; came into Washington in 1960 and for four years headed up the Halfway House Program which the Federal Bureau of Prisons at that time inaugurated.

1965-66, I was a student at the Woodrow Wilson School of Public Affairs at Princeton University, National Institute of Public Affairs Fellowship; returned to the central office of the Federal Bureau of Prisons in 1966 as Assistant to the Director; held that position for five years until I was appointed Director in March 1970.

Q Now, Mr. Carlson, do Warden Alldredge and Warden Norton [189] belong to you, sir?

A They certainly do and I am very proud of them, sir.

THE COURT: They report to him.

BY MR. HANNON:

Q I show you a policy statement, Mr. Carlson, and ask whether or not you are responsible for the issuance of this policy statement that bears the date of 2/11/72?

A Yes, I am.

Q You heard Warden Alldredge and Warden Norton testify extensively respecting the meaning of that policy statement. Do you agree, sir, with what they have said about it?

A Yes, I believe their interpretation is the correct interpretation of this policy.

Q Could you elaborate or could you help me out, please, and tell me whether or not a conversation is to last two or three minutes, as Warden Norton would seem to feel, or would a conversation last longer than two or three minutes, if necessary?

A I think it would depend on the circumstances again. To me, a conversation is something spontaneous which happens in an institution. I would differentiate that from an interview which is planned in advance, where the inmate has been hand-selected or selected in advance.

In terms of the time element, I would say five to ten minutes probably for a conversation. I can certainly envision situations where it may be longer than that. It [190] depends again on the institution and the particular circumstances.

Q Now, the policy statement that you have before you went into effect in 1966, except for one change, did it not?

A Essentially, there was one change made in this most recent policy statement.

Q What is the major change, please?

A We now permit inmates to correspond through the sealed prisoners' mail box system to members of the press; the press, in turn, can write back to the inmates and the correspondence coming back into the institution is only opened for inspection of contraband. So the inmate can carry on a dialogue, so to speak, or certainly carry on correspondence with any member of the media.

Q Now, would you tell us something about the Federal penal institution. How many facilities are there?

A Yes, we have—

THE COURT: If it would be of some help in that regard—I don't mean to interrupt—I have before me, out of my own library, the 1970-71 report of the Bureau of Prisons, which sets forth in some detail the different institutions and their locations and the nature of the program, Mr. Hannon. I am taking judicial notice of that report, as part of the material.

I don't want to cut you off any, but it even has Mr. Carlson's picture on the front page, along with a number [191] of these other gentlemen, and it is a very detailed and interesting report.

MR. HANNON: That is acceptable to me, Your Honor.

BY MR. HANNON:

Q May I ask, Mr. Carlson, how many inmates do you have within the Federal penal institution?

A We have 21,500 at the present time. It has been going up rapidly over the past two years, I might add.

Q How does our Federal penal institution compare to the California penal institution?

A I think there is a great deal of similarity between the Federal and California systems, both in terms of complexity and certainly size.

Our system at the present time has the 21,500 inmates. The offenses range all the way from murder to skyjackers, those that threaten the President, on down to some of the more white collar type offenses. But we certainly have a very complex system.

I might also point out that we take from time to time many of the severe custody and security problems from some of the state systems, including the District of Columbia. It is not infrequent when a governor or a high official in one of the states will call and ask us to take a particular inmate or a number of inmates who have been involved in a serious incident because of the fact that we do have probably a more [192] broadly-based type of correctional system, 28 different institutions.

Q Are all of your institutions satisfactorily staffed, Mr. Carlson?

A No, sir, I certainly couldn't say that. I guess, like any other correctional administrator, we need more facilities, positions, personnel, recreational activities, and so forth. I think corrections has been grossly neglected in the years gone by. However, I think there is progress being made at the present time. Our budget has increased substantially recently. We have a number of new

building programs underway and, frankly, are optimistic as we look toward the future.

Q Recently Judge Gesell and I were involved in the problems related to the youth correction facilities and how they were overcrowded.

Are the adult facilities within the Federal penal institution overcrowded as well?

A They are equally overcrowded, there is no question. All of our institutions are grossly overcrowded at the present time.

Q And what about recreational facilities for these inmates? Do you have adequate recreational facilities?

A No, with only several exceptions, such as the Kennedy Youth Center at Morgantown, West Virginia. We do not have adequate recreation facilities, particularly during the winter [193] months, which is the crucial time. During the summer, there is ample outdoor recreation at all our institutions.

Q Do you have or lack constructive work programs within every institution?

A We certainly don't have the type of programs that we think are necessary to do the job that is before us in terms of trying to correct the offenders committed by the courts.

Q Do these deficiencies, in your judgment, make it more difficult to operate the facilities?

A They certainly do. They certainly increase it; and, of course, the population pressures exacerbate that problem.

Q Now, Mr. Carlson, during the course of this hearing, the issue was raised respecting whether or not, pursuant to your new policy, inmate mail to the news media is transmitted from the institution facility without censorship.

Are you in a position to tell Judge Gesell whether the mail goes out, to your knowledge, uncensored or whether it is censored in any fashion?

A From personal opinion, I can attest to the fact it is uncensored. I occasionally get an irate phone call from a person who has received a threatening or obscene letter. A Federal judge called me, very irate. He received a

letter from an inmate. I explained the procedure and he understood.

On that basis and from other experience over the years, I can attest to the fact that the mail goes out [194] uncensored.

THE COURT: I didn't think there was any claim of censorship. I thought the statement was made only that some of the prisoners believe it is censored.

MR. HANNON: Yes.

THE COURT: I have not the slightest question in my mind that there is any censorship.

MR. HANNON: Once again, Your Honor, I am encouraged.

THE COURT: I think the issue was presented on the papers that the prisoners feel that it is, and I can understand that feeling, although it be wholly unwarranted. I think the point was made that that could be reassured by personal interview. That is what they were contending.

You don't contend that you have any evidence of censorship of mail, do you?

MR. CALIFANO: No.

THE COURT: I didn't think so.

MR. HANNON: I think I did ask Mr. Bagdikian and he said he had no personal knowledge.

THE COURT: I want to say, I do not think that is an issue before me.

MR. HANNON: I want to put it to rest, in case anybody might think it was an issue, if Your Honor please.

BY MR. HANNON:

Q Mr. Carlson, the 1966 policy statement that you [195] changed on February 11, 1972—answer this yes or no—did you have a reason for changing the policy statement?

A Yes, we did.

Q Now, in connection with the change in the policy statement, have you considered the change of policy that exists now within the Federal system as against the

similar systems that exist in some of our states in this country?

A Yes, we have.

Q Would you tell Judge Gesell, if you would, the comparability of our system to some of the others you are aware of?

A We have been under study for several months in terms of our policy statement concerning inmate access to the press. We are in litigation in several other districts on the same question.

Prior to the development of this policy statement promulgated on February 11, I, personally, contacted the state directors of corrections in most of the large states that had comparable problems. In addition, we talked with all of our institutional wardens and actually had them into Washington and spent several days reviewing which policy we felt would be the one that we could live with, in terms of the internal control and supervision of the institutions.

In calling some of my colleagues in the state systems, I found that many of them did not have policies; others that did have policies left it very much discretionary with the [196] warden or administrator of the institution. The warden could or could not approve the press interview, depending on his own particular feelings in the matter.

On the advice of my General Counsel and the General Counsel's office in the Bureau of Prisons, we felt we could not live with such a policy. We had to have something uniform that could be applied across our system, 28 institutions and 14 halfway houses.

THE COURT: Why, Mr. Carlson? I am very interested in that. There are certainly many aspects of the correctional process that you do leave to the warden's judgment.

THE WITNESS: Not in terms of broad policy, Your Honor. Generally, our policies and procedures are written in such a way that they are applicable across the system. So that—

THE COURT: Don't they have discretion in discipline?

THE WITNESS: No, the general policy on discipline is applicable at Lewisburg as well as it would be at Morgantown.

THE COURT: Isn't that a broadly discretionary policy to the warden so he can run his own institution?

THE WITNESS: Yes, it gives him considerable latitude, but it sets out the guidelines and minimum requirements.

THE COURT: This has no guidelines. This is an absolute, and I am wondering why you thought it had to be an absolute.

THE WITNESS: Because of the fact that we have inmates [197] that are transferred from one institution to another, from Lewisburg to Danbury, from Danbury to McNeil Island, in Washington. We have a great deal of transfer of inmates because of geographic residence. We have inmates that go out and back into a different institution on new Federal offenses or related to a parole violation. We thought we had to have a policy that would be applicable at Lewisburg as well as at LaTuna, Texas. We couldn't differentiate because the inmate happened to be at a different institution at a particular time.

BY MR. HANNON:

Q Judge Gesell said it is absolute. It is not absolute in the sense that the press can't engage in dialogue with inmates?

THE COURT: It is absolute on the issue before me, that there can be no interviews. That is what I meant.

MR. HANNON: It is absolute—

THE COURT: Absolute on the issue before me, i.e., no interviews, is it not?

THE WITNESS: With identifiable inmates.

THE COURT: There is no exception to it.

MR. HANNON: We will settle it.

THE COURT: Isn't it?

MR. HANNON: No interviews.

THE COURT: That is what I mean. That is the only respect in which I meant it was absolute.

MR. HANNON: I have great difficulty in saying it is [[198] absolute. If what we are talking about is ex-

change of communication between prisoners and media, this is not absolute in the sense it prohibits all exchange of communications. That is what I am concerned with.

THE COURT: I should not have used the word, perhaps, Mr. Hannon. I stand corrected. What I meant, and I think you understood, is that there is an absolute prohibition of interviews.

MR. HANNON: Yes.

BY MR. HANNON:

Q Mr. Carlson, would you tell us why you changed the policy that you now allow uncensored mail to the news media and uncensored mail back from the news media, except to examine, to make sure it doesn't incite riots or contain contraband? Why did you change the policy, please?

A As I indicated, we explored a number of alternatives that might provide access between the inmate population and the press; and based upon my own personal knowledge in the field of corrections, and conversations with all of our top staff and many of the state directors of corrections, I felt this was one policy which we could put into effect which would provide the communication between the inmate and the press and at the same time preserving the security and control of our institutions; and that, of course, is one of our very prime concerns, particularly in this day and age of difficulty.

[199] Q Did you think it would create a healthy environment between the news media and the inmates of the institution insofar as being able to communicate back and forth, that that would be in the public interest?

A Yes, I felt, obviously, the press does have an interest in our institutions and we encourage them to visit and we have for many years. I have been affiliated with the organization for 15 years. We have always encouraged the press to see our institutions and programs.

THE COURT: Mr. Carlson, let me ask you something. I don't want to be misunderstood. It is purely hypothetical.

A Newspaper gets word, perhaps, through—well, in this case, word through a Congressman of certain people

being denied medical aid. There is word that comes out that somebody has been brutally blackjacked, or something of that kind. The press goes to the warden. The warden says there isn't a word of truth in it.

Under this policy, that is the end of it?

THE WITNESS: No, sir, not at all.

THE COURT: How does the press, if it can, ascertain whether that charge—which you wouldn't tolerate in your institution for a minute—is true?

THE WITNESS: That is right.

THE COURT: How does the press ascertain whether or not that charge is so?

[200] THE WITNESS: I am certain if a reporter came to any of our institutions with that type of allegation, that an inmate had been brutally beaten, that the warden would make certain that the inmate was seen physically by the reporter, by the news media.

THE COURT: Now, in this instance, the reporter has come to your institution and says that he has reliable word from members of the Bar and from others that the leaders of the work stoppage have been thrown into solitary confinement, have been maced, have been denied medical care because they participated in the work stoppage.

Now, what is the difference?

THE WITNESS: I think, as Warden Alldredge has indicated, he did offer an opportunity to see the segregation unit where the inmates in question were confined. If there were any signs of brutality, they obviously would have been visible. In addition, we have had many other people that have talked to these particular inmates, their own attorneys, for example. If they would have noticed this, I am sure they would have taken appropriate legal remedy.

THE COURT: One of the remedies they took, apparently was to go to the press.

THE WITNESS: There were other alternatives which they had available, of course.

THE COURT: What it really comes down to is this: [201] I am not being critical of this; I want to understand it. It comes down to the fact in such situations, by

and large, the exposure of impropriety, if there is any, will depend on other processes than the press?

THE WITNESS: There are other processes available, but I think—

THE COURT: There are all kinds of writs that we get, and things. Certainly, there are. It isn't shut off.

THE WITNESS: It could also be by the press in their tour of the institution. They are permitted to see the segregation unit. If they find conditions there that do not conform to our standard and policies, they certainly would call this, I am sure, to someone's attention.

BY MR. HANNON:

Q Mr. Carlson, let us put this to rest, if you will please.

Is it not true that both at Danbury and at Lewisburg, when Mr. Bagdikian visited those two institutions, he could have gone to segregation and conversed with each member of the so-called negotiating committee that was in segregation? Could that not have occurred, if he was willing to accept it, sir?

MR. CALIFANO: Your Honor, I object. I think if we want to put it to rest, let's put it to rest with the people he talked to.

[202] THE COURT: If there were any instructions given by Mr. Carlson, I will take his instructions.

MR. HANNON: We are talking about the policy, under the policy. I think it is clear from the other two that he was offered this and refused it.

BY MR. HANNON:

Q Now, under the policy—

A Under the policy, he certainly could have.

Q That he could have gone on the tour of the institution and he would have gone through segregation?

A That is correct.

Q And he would have had an opportunity to converse with each person that was in segregation, as he toured the institution?

A (Witness nods assent.)

Q You are nodding your head and I wish you would speak.

A You are correct. I say, yes.

Q Thank you.

What, in your professional judgment, Mr. Carlson, would be the effect of allowing inter-face, in-depth interviews with particular individuals by the news media? What would be the effect of that?

A I think it would give notoriety to those individual inmates and cause them to become leaders, so to speak, in the institution. As you know, an institution is a total community [203] and when some inmates receive a great deal of attention, be it from the press or other means or other parts of our society, they do tend to rise up into a leadership role. At times, this can have a very negative effect on the institution and the environment of the institution.

As I indicated, one of our prime responsibilities is to maintain control and supervision of these institutions, and to grant interviews, particularly with some of the inmates who have been involved in serious incidents, could cause very severe consequences for the administration of that institution.

Q Is that why you are unwilling, sir, to change the policy from what it is today?

A Yes, based upon the experience of a number of our wardens, based upon discussions with other correctional administrators, I feel that we could not permit such a policy in our Federal prison system today.

Q How many wardens do you have, Mr. Carlson?

A We have 28 institutional administrators. The majority are referred to as wardens, several are called superintendents and directors.

Q Were each of the wardens consulted respecting whether or not interviews of prisoners should be allowed to the news media?

A Yes, they were.

Q Was any one of them in favor of them?

[204] A Some of them indicated it would not present a problem in their institution. Of course, in some of your juvenile or youth institutions or minimum security institutions, it would not, obviously, be a problem. Universal-

ly, in all of our nine major institutions we operate, represented by the penitentiaries, particularly, they were uniformly opposed to it.

Q Yes, sir.

THE COURT: That is a preference, then, to have the leadership among the prisoners developed within the prison based on other factors?

THE WITNESS: Certainly.

THE COURT: Are there not a large number of unhealthy factors that determine leadership within prisons?

THE WITNESS: There are, Your Honor. On the other hand, I think there are ample opportunities for leadership to emerge in the institutions. We have a number of activities, Junior Chamber of Commerce Chapters, Toastmasters, prayer groups, Holy Name Society, on and on, where leadership can emerge. We think this is positive leadership and leadership we encourage. I don't think there is any correctional administrator that encourages the negative type of leadership that can cause problems to security and control of that institution and do damage to staff and inmates.

THE COURT: I am sure it isn't encouraged. I wasn't suggesting that. There are factors operating in prisons for [205] inappropriate types of leadership.

THE WITNESS: I certainly would agree to that.

THE COURT: What I don't entirely understand is why it is felt that all of these interviews will be adverse to the prison. What experience is there to indicate that some of these interviews will not be beneficial to the prison?

THE WITNES: Well, Your Honor, I certainly wouldn't mean to imply that they would all be negative. Quite the contrary. But the problem we have is how we can develop a policy and procedure which are not arbitrary left in the hands of the warden. I certainly can envision many times when inmates would have complimentary things to say about our institutions.

THE COURT: That would be my impression.

THE WITNESS: How do you develop a policy which would not at the same time permit the very negative, hostile, anti-social individual from developing himself into

a very negative force within the institution? That is the problem we are grappling with; we did grapple with.

BY MR. HANNON:

Q Do you have some knowledge and reasonable anticipation, Mr. Carlson, respecting the nature of the prisoner that the press would be interested in, the type of prisoner the press wants to interview?

A Yes. Based on my experience in institutions and from being in the central office in Washington, there is a very [206] small segment of the inmate population that is of any interest at all to the press. The notorious inmates, of course, have already been well documented. We have a number in the Federal system because of the unique character of the Federal system. At the same time, the press is interested in some of the more hostile, militant inmates that do present problems in terms of management and control of the institution.

Q Under the circumstances, do you reasonably anticipate the type of person the press might be interested in would be saying something nice about your penal institutions?

A I guess after a while in this business you get a little biased. I can imagine that there would be, certainly. We have had some very favorable stories written about some of our programs in recent years.

MR. HANNON: May I have Your Honor's indulgence, please?

I have no further questions of Mr. Carlson.

CROSS-EXAMINATION

BY MR. CALIFANO:

Q Mr. Carlson, you said early in your testimony that incoming letters from the reporters were inspected only for contraband. Do you want to correct that?

A I believe the policy says, especially for contraband of for contents which would incite illegal activity. There is a broader clarification, although, frankly, contraband is our number one concern.

[207] TH ECOURT: You certainly wouldn't suggest, Mr. Califano if a reporter sent in an escape plan that it should go right on through, would you?

MR. CALIFANO: I don't think reporters can learn enough about the prisons to send in a good escape plan.

BY MR. CALIFANO:

Q One other point.

I think you indicated in your testimony, sir, that you have different kinds of institutions. You have the ten that are penitentiaries and the others are in varying lesser degrees of need for security, or lesser degrees of prisoners in those other prisons; is that correct?

A Yes, that is correct.

Q Your policy—if I may refer you to it, Paragraph 8, on Page 2—applies the same policy to offenders who are in community programs as it does to inmates in maximum security prisons.

Did you give any thought to drawing a distinction there when you were putting this policy together?

A Yes, that is one of the alternatives considered; but, again, on the advice of our General Counsel, who has done a good deal of research on this subject, the feeling was that we simply could not differentiate between the total Federal prison system, as inmates do move from one status to another, as I indicated.

[208] For example, we transfer many inmates to place them closer to home or, when near release, to a lesser security type institution.

Our feeling was, because of the range of our Federal penal system, as Mr. Procunier indicated about California, there had to be some uniformity across the entire system. We could not make a distinction between one institution and another.

Q I will stay with your policy for a while, if I may.

There is a distinction in the policy, in terms of the letter going out, which we have heard over and over again today, where the prisoner may sign his name, his name may be used in the press, and what-have-you.

What, in your opinion, was the basis for distinguishing between the notoriety of prisoner would receive from

a letter in which his name would be used and the notoriety he would receive from a personal interview?

A We felt, and I, personally, feel there would be much less notoriety connected with a letter going out than there would be from a personal interview, where the press actually makes a trip, frequently many miles, to an institution, and the inmates in the institution immediately know that the press is present and there for one purpose, and that is to interview this one particular inmate.

Q Well, you mean there would be less notoriety within the prison even if no story were written from an interview [209] and a story were written from a letter?

A No, sir, there would be far less notoriety from a letter than there would be from any type of interview situation, far less notoriety.

Q It is the publication that is important; or is it the visit that is important?

A I think both are important. The fact that a reporter or anyone comes to an institution to visit a given inmate immediately spreads throughout the institution. It is a very small community. A letter going out, on the other hand, is very innocuous and, frankly, no one else would know it, unless it was published in a particular paper and other inmates may or may not read that paper.

Q So the visit is one element of your concern, the notoriety the visit, itself, gives?

A Yes, sir.

Q You thought letters are less likely to be published by the press?

A No, we gave no consideration as to likelihood of being published. Frankly, that never has entered our discussions. We were trying to find something that we felt would provide a balance between our responsibility for the management and control of our institutions and inmates' access to the news media. We felt this is one way in which it could be accomplished.

Q Do you feel that a newspaper story off of a letter—[210] take our hypothetical example before, and answer it as the expert that you are—a letter which results in a newspaper story on the front page of the Washington Post is a matter of concern to the warden of a prison?

A Oh, yes, it would be.

Q It would be. And his name would be used.

You felt that that is a matter of less concern, though, than a personal interview in which the man's name cannot be used published in the newspaper?

A Yes, because even though the inmate's name could not be used, the inmates in the institution would know who it is automatically within a few minutes of the interview. The fact that the name is used or not, I think, is really not of any consequence.

Q You also concluded in your directive, as we know from questions today and answers, photographs of prisoners could be taken if they consented by the press?

A (Witness nods assent.)

Q Does a prisoner gain any notoriety from having his photograph taken?

A I don't believe so.

Q If it is published in the newspaper?

A The photograph ordinarily taken does not identify the individual inmate, just a shot generally in the institution, [211] of the hospital, shop, or educational program or chapel. The fact that an inmate happens to be there generally does not give him any notoriety.

Q In the case we have, for example, could Mr. Bagdikian take pictures of the prisoners in segregation, not speaking to them, if they were willing?

A I am not in a position to comment specifically on that. I would have to refresh my memory from the policy statement with respect to pictures. He did take a number of pictures, however, when he was at Lewisburg. I think he was given pretty much free reign of taking whatever pictures he desired.

Q Under your regulation, you said he could go to the segregation unit, you would permit him to go see, look at any prisoners and see if they had been hurt.

MR. HANNON: I think it is irrelevant. I object to it. We are not talking about picture taking.

MR. CALIFANO: Your Honor, I think—

THE COURT: It is argumentative, isn't it?

MR. CALIFANO: Let me rephrase it.

BY MR. CALIFANO:

Q You indicated in your testimony that Mr. Bagdikian was free, at least as you would interpret the policy, to go to the segregation unit and look at these prisoners.

A That is correct.

Q To check any allegation that a prisoner had made [212] that he had been maced or hurt, or what-have-you.

A That is correct.

Q As a result of the strike.

In order to check the allegation he, presumably, would have to see the prisoner who had alleged that he was maced or struck.

A (Witness nods assent.)

Q Is that correct?

A That is correct.

Q Could he have a conversation with that prisoner of two or three minutes?

A Yes, he could, under the terms of our policy statement.

Q So that he can request to see a specific prisoner who is on the negotiating committee who alleges that he has been maced or not received medical treatment and have a conversation with him of up to ten minutes?

A No, I didn't say that at all.

Q I thought you said that, Mr. Carlson.

THE COURT: Mr. Carlson is saying if the information is that there are a number of them in solitary, or some other confinement, he can go there and talk to them as a group. He cannot talk to them individually.

That is what I understand you have been saying and what the other men have been saying.

THE WITNESS: Yes.

[213] MR. CALIFANO: I think Mr. Carlson said he could walk down the line and have a conversation with each of the men in segregation.

THE WITNESS: He could have a conversation as he walked down the line with the men that were in there.

BY MR. CALIFANO:

Q I don't understand. If you do have an allegation from two or three members of the negotiating committee

or any two or three members who say they have been hurt or mistreated in some way, you volunteered that the reporter would certainly be permitted to see them.

A Yes, I believe Warden Alldredge has already testified to that.

Q And to have a conversation with them?

A Yes, sir.

Q He would have to identify two or three prisoners?

A (Witness nods assent.)

Q So there are circumstances, you are telling us now, under which Mr. Bagdikian can identify two or three prisoners and can go and have a conversation?

A No, I think the question is really one of identification. If he would go down through the segregation unit and find an inmate who allegedly had been beaten.

Q How do you check the man who writes a letter and says, I have been denied medical treatment and been beaten up?

[214] You said, I believe, you would make certain that the inmate was seen physically by the reporter.

A As I recall, I said, I am sure the warden in that type of situation would make certain that the inmate had been seen by the reporter.

Q Mr. Carlson, did your counsel advise you to open up to the press in some way in terms of writing your directive? When you say what the reason for the directive was, were you aware of court decisions in this area?

A Obviously, this was a factor that was under consideration, under discussion.

Q You don't believe there are institutional emergencies at either Danbury or Lewisburg, do you, sir?

A At the present time?

Q At the present time?

A At the present time, the answer is, no.

Q Mr. Carlson, are you on the committee on the Model Act for the National Council on Crime and Delinquency?

A I was asked to serve on an advisory panel that reviewed a draft which was developed by the National Council on Crime and Delinquency. I was one of a number of members but that was an ad hoc group. We had

no meetings. We did contribute to the National Council on Crime and Delinquency, of which I have been a member for a number of years. We submitted copies of a number of our policies and our procedures.

[215] THE COURT: But you don't agree with the proposed act to provide minimum standards for the protection of rights of prisoners?

THE WITNESS: Not in its entirety.

BY MR. CALIFANO:

Q You don't?

THE COURT: It is inconsistent with his policy.

THE WITNESS: I was one of the advisory group. I was involved with a number of people. I would doubt anyone was in total agreement with all parts. We had no meetings. We were asked to contribute our thoughts and policies and procedures. It was developed by the legal staff, I believe, Mr. Ruben, of the National Council on Crime and Delinquency.

MR. CALIFANO: May I just have a minute, Your Honor.

BY MR. CALIFANO:

Q Did you consult with the Commissioner of Prisons of New York City when you were making up your policy; do you remember?

A Not directly-with the Commissioner but with one of his deputies who was formerly an associate of mine in the Federal prison system.

Q You obviously decided to reject that kind of wide-open policy?

A Yes, we did.

Q Did you consult with others who had such policies?

[216] I understand there are about ten states that have fairly wide-open policies.

A Yes, we did. As a matter of fact, we called the directors and discussed with the directors of all the states that we had been led to believe had wide-open policies. Frankly, we found from discussing with them that the policies were really not wide open at all. The warden or administrator of the institution had broad discretion as to whether or not to permit an individual interview.

Q How many Federal prisoners have become leaders within the prison as a result of any discussions they have had with the press in prison? Has that ever occurred?

MR. HANNON: I don't understand the question, Your Honor.

THE COURT: I don't see how this man would know.

MR. HANNON: I object to it.

BY MR. CALIFANO:

Q Let's put it this way: The people Mr. Bagdikian desired to see at Lewisburg and Danbury were leaders of the strike or members of the negotiating committee.

A Yes, I understand they were.

Q Was your concern that if Mr. Bagdikian saw them, they would have been strengthened in their leadership position? Were you trying to break their leadership position?

A Well, the decision—

[217] Q It certainly wouldn't create new leaders out of town?

A The decision was based on our policy and, obviously, this is one consideration in the over-all policy. By permitting interviews with individual, identifiable inmates, it would tend to give them an opportunity to gain leadership or have them in more of a leadership position within the institution.

Q Do all your Federal prisons have visiting facilities?

A Yes, they do.

Q Do they all have facilities for counsel to meet with prisoners?

A Not separate facilities. Each institution has its own visiting room, open visiting rooms. In some places, we have special rooms for counsel, where we have room. In others, it is just in the general visiting facility.

Q Do you know of how many times, if ever, a reporter has been given the kind of opportunity—to use Warden Alldredge's words—to meet alone with a random group of prisoners?

A I couldn't cite you a specific number. It is not uncommon, it has never been uncommon. I have permitted this myself in institutions where I have worked. Par-

ticularly in a juvenile youth institution, it is not uncommon for a reporter to sit down and spend time with a group of inmates. The inmate council, or whatever group there may be.

Q One last area.

[218] You indicated, Mr. Carlson, that under your policy the warden can pick the prisoner and present him to the reporter to interview. He can identify some prisoners that a reporter may interview, at least, in a group?

A No, I didn't say that at all, I believe.

Q I am sorry.

A I think the policy says that he can have conversations with inmates as he walks through the institution. The warden doesn't pick the inmate. It is whoever he encounters during his tour of the institution.

Q You say at least at institutions that you have been familiar with, and to your personal knowledge, reporters often on prior occasions have been granted an opportunity of the kind Mr. Bagdikian was granted at Lewisburg in the Federal prison system to sit down for 45 minutes with a group of a half dozen or so prisoners?

A (Witness nods assent.)

Q Yes?

A Yes.

Q When those reporters do that, the prisoners can be selected by the warden? They are not selected by the reporter?

A Not necessarily. It depends on the situation. It can be done randomly; it can be a group of inmates in a particular program in the institution.

Q Or it could be selected? Can they be selected by [219] the warden?

A It could be but I would suspect that most wardens would not want to select them because of the obvious bias that would creep in, that would be assumed to creep in by the selection process.

Q Most wardens would not want to use the beneficial aspect of the press?

A We are sensitive to this factor and we do everything we can to try to eliminate the supposition that we are doing the picking of the hand-selected group of inmates that will say the right things as far as we are concerned.

MR. CALIFANO: Thank you.

THE COURT: Anything further, Mr. Hannon?

MR. HANNON: If Your Honor has no questions of Mr. Carlson, then we rest.

THE COURT: Both sides rest, I take it?

MR. CALIFANO: Yes.

THE COURT: Thank you, Mr. Carlson.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: What do you gentlemen want me to consider beside the preliminary injunction, anything?

MR. CALIFANO: As far as we are concerned, Your Honor, no. It is the preliminary injunction in the context in which I put it at the beginning of the presentation of our case today.

[220] MR. HANNON: I could gain brownie points by saying we would be willing to let Your Honor consider it on summary judgment, in view of the fact he wants you to only consider it on motion for preliminary injunction.

THE COURT: I don't by my question mean to suggest that I have any view at this moment. I think this is very difficult. I don't think this is an easy problem.

The point that was in my mind was that we have had a fairly complete record and I was wondering whether there would be anything different if we go in this case in two stages than if we go in a single stage, if you follow what I mean, Mr. Hannon.

MR. HANNON: I understand.

THE COURT: We have had a full day of carefully, well-presented, appropriate witnesses. I was just wondering whether the only matter before me is the question of the specific preliminary injunction or whether, it being brought in a declaratory judgment as well as an equity-context, the record was ripe for determination of a more final character.

MR. HANNON: If I may address myself to that, Your Honor. If Your Honor agrees with us that there is no First Amendment problem involved, then the action should be dismissed.

THE COURT: I understand that.

MR. HANNON: So we would be willing for Your Honor to consider a motion to dismiss on that ground.

[221] If Your Honor is going beyond that and thinks there are some constitutional issues involved in this case, we would prefer Your Honor restrict it to the request for preliminary injunction. We are satisfied, on the basis of the findings of fact and conclusions of law Your Honor will have to enter in this case, that we will be able to move for summary judgment on those findings of fact and conclusions of law.

MR. CALIFANO: Your Honor if I may. There are, we believe, at least ten other jurisdictions, state jurisdictions, which have in varying degrees press policies that would permit, for example, what Mr. Bagdikian wants in this case. They are not all similar. We have not had time to talk to them.

THE COURT: I understand that.

MR. CALIFANO: Particularly in terms in which our final relief requests that the Bureau of Prisons' regulation be stricken or that portion of it certainly, and some guidelines be provided for the development of a new regulation, it might be helpful to the Court to have before it precisely what those other states provide.

Secondly, to the extent that this Court feels that the New York City or District of Columbia prison experiences are easier or different in any relevant way than the Federal experience,—we happen to think New York certainly is more severe—but to the extent that this Court feels that, we believe that it might be helpful to provide wardens from major [222] state systems who have policies open to the press that might be considered more comparable.

Those are the two points that we would add.

THE COURT: Counsel want only limited issues decided, I take it.

I must say from some of the things you have said, I think you may misstate the role of the Court, Mr. Califano. It is not the Court's task to draw the regulation that the Court feels should be drawn in the event the Court was in Mr. Carlson's position. That isn't my function.

MR. CALIFANO: I didn't mean to imply that, Your Honor.

THE COURT: I have no intention to get involved in that respect. Certainly in this area there is substantial

room for difference of opinion and based on differences of experience and different objectives.

I believe the question the Court has to consider would be the narrow one and I will rule on that. I am going to take it under advisement tonight, of course; and then matters will take their course in the normal litigating manner if that is what the parties desire.

I gather that is what both sides do desire. So that is what I will do. I would much prefer myself to dispose of the entire case on this record but I am not going to put counsel in that position when counsel do not want to do so.

Very well, thank you very much, gentlemen. I will [223] proceed promptly to dispose of this matter, as promptly as the Court can.

MR. CALIFANO: Your Honor, if I may just amend what I said earlier.

As far as we are concerned, in view of what you said about my comments of what we would offer in addition, as far as we are concerned, you can decide the matter on this record.

THE COURT: Why don't you think about it overnight, both of you. I don't want to be influencing tactical or other decisions of counsel. I naturally raised it because at this stage we have had a very full hearing. We haven't been on affidavits; everybody has been subject to cross-examination. We have a fairly complete record.

I have no way of knowing whether there are other things that you would want; or you would want, Mr. Hannon.

MR. HANNON: Yes.

THE COURT: Why don't both of you sleep on it overnight.

MR. CALIFANO: Fine.

THE COURT: Let me know what your considered judgment is about it one way or the other tomorrow morning.

MR. HANNON: Yes, Your Honor.

If Your Honor please, if it will be helpful to Your Honor, the Government is ordering a copy of the transcript of the entire proceedings that occurred here today, so that in the [224] event Your Honor wants to review them, they will be available after they have been prepared.

THE COURT: Yes. I will have that in mind.
You gentlemen will let me know tomorrow which way
you feel.

Thank you all very much.

(Whereupon, at 4:10 p.m., the hearing was concluded.)

CERTIFICATE OF COURT REPORTER

I, Ida Z. Watson, certify that I reported the proceedings in the above-entitled cause on March 23, 1972, and the foregoing pages 1 to 224, inclusive, constitute the official transcript.

/s/ Ida Z. Watson
IDA Z. WATSON

DEPARTMENT OF CORRECTION
CITY OF NEW YORK
OFFICE OF THE COMMISSIONER

GENERAL ORDERS No. 2

January 4, 1972

To: ALL MEMBERS OF THE DEPARTMENT

AMENDMENT TO THE RULES AND REGULATIONS
(INTERVIEWS OF DETENTION INMATES BY
ACCREDITED REPORTERS)

1. The Rules and Regulations of the Department as contained in General Orders No. 6, dated April 21, 1971, are amended as follows:

Rule 4.41A is rescinded and new Rule 4.41A is added to read as follows:

"4.41A Whenever a detention inmate receives a written communication from a duly accredited reporter requesting permission to interview him, the inmate, if he wishes to be interviewed, shall submit such information in writing to the head of the institution. The head of the institution, after having determined that the reporter meets the requirements of accreditation in accordance with the guidelines established in Letter Orders No. 20, dated April 21, 1971, shall instruct the appropriate employee concerned to record the reporter as an authorized visitor on the "Visiting Card-Detention Institution," (Form no. 46 in accordance with existing procedures. The head of the institution shall then notify the inmate in writing that his request to be interviewed by a reporter was granted. In addition, in his communication, the head of the institution shall instruct the inmate that his visit is approved subject to the following conditions:

a. *That the reporter will conduct his interview between the hours of 9:00 A.M. to 3:00 P.M., from Mondays to Fridays, holidays excluded.*

b. *That the interview will take place in the Counsel Room under the same conditions that prevail for other*

persons permitted to interview inmates in the Counsel Room.

c. That the reporter will be required to properly identify himself before he may visit.

d. That he will not be permitted to enter the institution with or be allowed to use any camera or recording device in the conduct of his interview.

e. That he will be treated in the same respect as any other authorized visitor and will be required to comply with all visiting rules and procedure of the institution.

2. *In the event that more than one accredited reporter wishes to interview the inmate at the same time, the head of the institution may consolidate the interview provided that:*

a. *There is mutual agreement in writing by all the parties concerned.*

b. *The head of the institution deems the arrangement to be administratively appropriate.*

3. The following records pertaining to this matter shall then be attached and filed as a permanent record in the "Inmate's Record Envelope."

a. The inmate's written request for permission to be interviewed.

b. A copy of the reporter's letter requesting permission to interview the inmate.

c. A copy of the head of institution's letter to the inmate granting permission for the interview.

d. *If the interview is consolidated, a copy of the mutual agreement by all the parties concerned."*

4. *The provisions of this order are not intended in any way to supersede or to prevent any authorized regular visitors from visiting the inmate during regular visiting hours.*

5. The underlined material in this order is new.

/s/ George F. McGrath
GEORGE F. MCGRATH
Commissioner

DEPARTMENT OF CORRECTION
CITY OF NEW YORK

OFFICE OF THE DIRECTOR OF OPERATIONS

Date: April 21, 1971
From: Director of Operations
To: Heads of Institutions
Subject: GUIDELINES FOR IDENTIFYING MEMBERS OF THE
NEWS MEDIA AS ACCREDITED REPORTERS

1. The following guidelines for identifying members of the news media as accredited reporters as promulgated by Mr. Agenor L. Castro, Director of Public Affairs, as published for the information, guidance, and strict compliance of all concerned:

a. An accredited journalist is one who has a Police Department Press Card made out in his name. These press cards do not bear an identification photograph, therefore other confirming identification will be required.

b. Requests for interviews by foreign journalists must be approved by the Director of Public Affairs as their credentials differ from those of local newsmen.

c. Requests for interviews from reporters representing "marginal publications" such as underground newspapers, newsletters, and business publications shall not be granted unless approval is first obtained from the Director of Public Affairs.

d. Radio and television reporters, as well as magazine editors and reporters representing publications such as Life, Time, Newsweek, U.S. News and World Report, Ebony, Look and the New Yorker shall also be permitted to interview detention inmates provided that they are properly identified.

e. Editors or reporters representing college or high school publications *shall not* be permitted visits.

2. Any further inquiries regarding this matter shall be made to Mr. Agenor L. Castro, Director of Public Affairs.

3. Interviews granted pursuant to this order are subject to the conditions established in General Orders No. 6, dated April 21, 1971, concerning "Interviews of Detention Inmates by Accredited Reporters."

/s/ Joseph D'Elia
JOSEPH D'ELIA
Director of Operations

JD'E/bn

cc: Commissioner
Deputy Commissioner
Assistant Commissioner, Administration & Planning
Assistant Commissioner, Rehabilitation
Director, Public Affairs
Director, Legal Affairs

* * *

d. If the interview is consolidated, a copy of the mutual agreement by all the parties concerned."

5. The provisions of this order are not intended in any way to supersede or to prevent any authorized regular visitors from visiting the inmate during regular visiting hours.

6. The procedure as outline above may, at any time, be temporarily suspended by the Commissioner whenever, in his opinion, internal or external conditions warrant such suspension.

Benjamin J. Malcolm
Commissioner

BJM/bn

DEPARTMENT OF CORRECTION
CITY OF NEW YORK
OFFICE OF THE COMMISSIONER

GENERAL ORDERS NO.

To: ALL MEMBERS OF THE DEPARTMENT

AMENDMENT TO THE RULES AND REGULATIONS

(Interviews of Inmates By Accredited Reporters)

1. The Rules and Regulations of the Department as contained in General Orders No. 2, dated January 4, 1972, are amended as follows:

Rule 4.41A is rescinded and new Rule 4.41A is added to read as follows:

"4.41A Whenever an inmate receives a written communication from a duly accredited reporter requesting permission to interview him, the inmate, if he wishes to be interviewed, shall submit such information in writing to the head of the institution. The head of the institution, after having determined that the reporter meets the requirements of accreditation in accordance with the guidelines established in Letter Orders No. 20, dated April 21, 1971, shall instruct the appropriate employee concerned to record the reporter as an authorized visitor on the institutional "Visiting Card" record in accordance with existing procedures. The head of the institution shall then notify the inmate in writing that his request to be interviewed by a reporter was granted. In addition, in his communication, the head of the institution shall instruct the inmate that his visit is approved subject to the following conditions:

a. That the reporter will normally conduct his interview between the hours of 9:00 A.M. to 3:00 P.M., from Mondays to Fridays, holidays excluded. Exceptions will be made as required when the head of the institution, because of administrative reasons, decides that the inter-

view could best be conducted at a different time or on an alternate day.

b. That the interview will preferably be conducted in the Counsel Room.

c. That the reporter, as well as all members of his reporting staff will be required to properly identify themselves before they may visit.

d. That the approved reporter and members of his staff shall be permitted to utilize cameras, recording devices, and whatever other equipment is commonly considered to be equipment of the trade in the conduct of the interview.

e. That the reporter and the members of his reporting team shall be required to strictly comply with all the rules and procedures set forth by the head of the institution for the conduct of the interview.

2. The head of the institution shall then notify the Director of Public Affairs in order that the interview may appropriately be scheduled at the institution to the mutual convenience of all the parties concerned.

3. In the event that more than one accredited reporter wishes to interview the inmate at the same time, the head of the institution may consolidate the interview provided that:

a. There is mutual agreement in writing by all the parties concerned.

b. The head of the institution deems the arrangement to be administratively appropriate.

4. The following records pertaining to this matter shall then be attached and filed as a permanent record in the "Inmate's Record Envelope."

a. The inmate's written request for permission to be interviewed.

b. A copy of the reporter's letter requesting permission to interview the inmate.

c. A copy of the head of institution's letter to the inmate granting permission for the interview.

**Department of Correction—
Intradepartmental Memorandum**

Date : March 22, 1972
From : Correction Officer, John Walsh
To : Commissioner, Benjamin J. Malcolm
Subject : Press Interviews

Per your request, the following information is submitted regarding inmate press interviews since departmental order of authorization on April 21, 1971.

A. *Bronx House of Detention*

Three inmates, Herbert Blyden, Kenneth Moore and Richard Moore have been interviewed by the following members of the news media;

WNYU—Voice of New York University
 WLIB—Radio
 News Week Magazine—Tom Mathews
 Channel 13—Jack Newfield
 Pacifica—Delores Costello
 Village Voice—Jack Newfield
 Village Voice—Mary Brosted
 Christian Science Monitor—Jack Waugh
 Boston Globe—Robert Tessner
 WNEW-TV—Mark Monsky
 News Day Magazine—Flora Lewis
 New York Times—Fred Federetti
 Time & Life News Service—James Willwerth

B. *Branch Queens, Queens and Brooklyn Houses of Detention*

Have received no inmate interview requests from the news media.

C. *Manhattan House of Detention*

Harlem "4" interviewed by Channel 13
 Pyle Brothers interviewed by the New York Post

George Carpenter interviewed by The Staten Island Advance

Kenneth King interviewed by The Staten Island Advance

Michael Molaire interviewed by WCBS-TV & The Daily News

Alfred Garry interviewed by Lucy St. John of The Staten Island Advance

Records indicate that thirteen inmates have consented to indepth interviews by the news media since April 21, 1971 throughout our correctional facilities.

/s/ John P. Walsh
JOHN P. WALSH
Correction Officer

JPW:jaw

DEPARTMENT OF CORRECTIONS, D. C.
Office of the Director

DO 1300.3B
January 24, 1972

DEPARTMENT ORDER 1300.3B

Subject: Public and News Media Relations

1. *Purpose.* To establish responsibilities, policies, and procedures to be followed by Institution, Community Correctional Center and other personnel in dealing with news media and the public.
2. *Definition.* News media includes newspapers, magazines and other periodicals, wire services, radio and television stations and networks, free-lance authors and photographers, and all others whose purpose is to convey information to the public.
3. *Responsibilities and Guidelines.* Superintendents, Community Correctional Center Administrators, Executive Staff, and other employees are involved in and responsible for good news and public relations within their areas of authority and responsibility. The Director has overall responsibility for the conduct of public and news media relations.

The essential elements are that everyone involved, (Superintendents, Community Correctional Center Administrators, Executive Staff and others), deal honestly and forthrightly with the news media and public and do so by being consistent with Department programs and policy.

4. *Policies.*

- a. Information about an inmate that is a matter of public record will be provided to any person who makes a legitimate inquiry during normal business hours. Questions concerning "legitimate" shall be referred to the Director. Such information usually shall be limited to the inmate's name, offense for which convicted, length of sentence, date of sentencing, date of arrival or transfer, parole eligibility date, and date of expiration of sentence.

b. Contents of inmate files, except for the data in paragraph (a) are confidential. Legitimate requests from the news media for additional information about individual inmates shall be referred to the Director.

c. Representatives of the news media are encouraged to visit Department institutions, and other facilities for the purpose of preparing reports about institutional facilities, programs and activities. News representatives calling institutions should be advised that such requests must be approved by the Director. Usually, staff members from the institution will be designated to serve as guides. Such staff members may respond to questions about facilities, programs and activities but should refer all questions about policy and about individual inmates to institutional administrators.

d. Interviews with individual inmates may be permitted after written request to the Director and after an inmate agrees in writing on attached Information release Form (see Attachment I). This kind of interview is distinguished from one in which a reporter may be talking with a number of inmates concerning a story about the institution or one of its programs. In such cases, agreement on the "ground rules" will be between the Superintendent and the reporter(s).

e. Inmates have the right not to be photographed. News representatives must be requested to obtain permission before photographing inmates and should be advised that full front view photos of inmates are not encouraged but, if taken, releases must be signed by the inmates. (see Attachment I). In such cases of escape, official photos will be made available to the press.

f. News representatives may visit business establishments which employ work releasees; however, such requests should be submitted to the Associate Director for Community Services or Youth Services so that the permission of the employer is obtained in advance. The rules outlined in paragraphs (d) and (e) above apply equally in the work release situation.

g. Announcement of escapes, disturbances, accidents, and fatal or severe assaults should be made to local news media as promptly as possible by the Superintendent and others or by staff members designated by them. It is advisable to prepare a statement for possible release by telephone or messenger to all media, briefly stating the facts. A telephone report, followed by a written report, must be made to the Office of the Director immediately after an incident occurs. (See Attachment II).

h. Death of an inmate by natural causes normally is not newsworthy. However, upon the death of an inmate who has attained national notoriety, the procedure outlined in paragraph (g) will be followed. (See Attachment III.) Other deaths occurring in Department facilities also make news; for example, those resulting from assaults on inmates or officers involved in law enforcement. Consequently, great caution should be used in reporting these. No comment should be made that would jeopardize either the possible defense or prosecution.

i. All announcements related to Department policy, such as changes in institutional missions, type of inmate population, or physical facilities, as well as announcements of changes in executive personnel, will be made by the Director. Media inquiries on such subjects should be referred to the Director.

j. Copies of news releases issued by mail, messenger or telephone, should be sent to the Director along with a distribution list. Clippings or summaries of newscasts should accompany these. Copies of releases and other materials issued by the Director's Office will be sent to the Executive Staff, Superintendents, and Community Correctional Center Administrators. Copies of all photographs also should be sent to the Director together with the necessary identification and releases, if necessary.

k. Department policy and programs will be announced only by the Director. Members of the Executive Staff may make announcements about programs but they must be cleared through the Director prior to release.

5. *Methods.*

a. Spot news, routine news and feature news which is cleared through the Director will be prepared, printed and disseminated by Superintendents and others. A basic media list is attached as well as telephone numbers. (See Attachment IV). Superintendents and others should add any media they feel necessary to the basic list. These additions should be reported to the Director.

b. Fairness in dealing with the press is essential. Each member should get the same information concerning news released by Superintendents and others. However, if a reporter develops a story on his own, his "scoop" should be respected.

6. *Cancellation.* DO 1300.3A dated April 2, 1971, is hereby cancelled.
7. *Effective Date.* This Order is effective upon receipt.

/s/ Kenneth L. Hardy
KENNETH L. HARDY
Director

DISTRIBUTION: "A" & "B" plus
President, Lodge 1550, AFGE
Secretary, Lodge 1550, AFGE

DO 1300.3B
Attachment (I)
January 24, 1972

DEPARTMENT OF CORRECTIONS
District of Columbia Government

INFORMATION RELEASE

Date: _____

I agree to the use of my picture and statement in (on) *(Name of publication, radio or TV station)* with the understanding it (they) is (are) to be used solely for informational or educational purposes. No use of it (them) may be made for commercial purposes, nor may it (they) be otherwise exploited.

cc: Director
Superintendent
Inmate File
Media

DO 1300.3B
Attachment (II)
January 24, 1972

DEPARTMENT OF CORRECTIONS, D. C.

ESCAPE RELEASE FORMAT

(Number) inmate(s) escaped (date and time) from (institution), (official), reported.

He (they) *(briefly and factually describe the method of escape if it is known. Do not speculate. If it is not known, simply say the matter still is being investigated and refer questions to the Director's Office.)*

(Official) said escape procedures were put into effect immediately and local and area law enforcement agencies have been notified.

The escapees are:

(List the names, offenses for which convicted, length of sentence, date of sentence, date of commitment or transfer, parole eligibility date, and date of expiration of sentence for each escapee).

(Do not use the following in dealing with the news media.)

It is imperative that a copy of this report be on the Director's desk by 8:00 a.m., the day following the escape unless it occurs during the normal work day, in which case it should be sent to the Director's desk immediately.

DO 1300.3B
Attachment (II)
January 24, 1972

DEPARTMENT OF CORRECTIONS, D. C.

CAPTURE RELEASE FORMAT

(Official and institution) reported the capture of (number) inmate(s) who escaped (date).

The (agency which made the capture) apprehended (number, or him or her) at (location) on (date). (Then describe briefly and factually the circumstances of the capture).

The inmates who left (institution) on (date) were:
(List information detailed in DCDO 1300.)

DO 1300.3B
Attachment (III)
January 24, 1972

OBITUARY RELEASE FORMAT

(This is only a basic obituary format. It should be used only when a well-known, "notorious" inmate dies in an institution. It also may be used to announce the death of a staff member.)

(*Name, age*) died (*date*) following (*a long, short*) illness (or, if true) as a result of wounds (injuries) suffered as a result of an escape attempt, riot, fall, industrial accident (or whatever the facts are).

He has been confined at (*institution*) for (*time*). He was sentenced (*date*) for (*crime for which convicted*).

During his stay at _____ he (here list any major positive contributions the inmate may have made. There is little need to add anything else since the news media likely will have nearly complete information on the inmate.)

In the case of employees add:

Date of birth and place

Length of service

Career facts, including promotions, awards, citations

Publications, if any

Educational and other employment background

Date of marriage and to whom and where. It usually is advisable to use only his last marriage.

Number and names of children, and number of grandchildren

Professional and social affiliations.

Above all, check all the facts with the family. If all the information is not available, use what you have.

DO 1300.3B
(Attachment IV)
January 24, 1972

NEWS MEDIA

When calling in a news media release, ask for the city desk in the case of newspapers or the news desk in the case of radio or TV. Sometimes the operator will ask if you want radio or TV news. Usually, ask for the TV news desk. The reporter to whom you give the story may sometimes ask if you'll agree to be recorded. Go ahead and do it, unless you have "mike fright." In that case, ask someone else to do it. All you have to do is read the release.

Frequently, reporters will ask for more details and speculation. Don't speculate, but give any additional *facts* you may have. Above all, keep all who should be informed.

Newspapers:

Post—223-7200
Star—484-4200
News—347-0411 or 347-7777

Television:

WMAL—686-3020
737-2900
WTTG—244-5151
244-3474
WTOP—244-5678
WRC —362-4000

Radio: (Partial, but usually interested)

WAVA—522-1115
Metromedia—244-6220
WRC —362-4000
WMAL—723-2976
WUST—462-0011

**PUBLIC INFORMATION SERVICE
D. C. DEPARTMENT OF CORRECTIONS**

KENNETH L. HARDY, Director

[SEAL]

**Superintendent's name
Telephone number**

**DO 1300.3B
Attachment (V)
January 24, 1972**

NEWS RELEASE FORMAT

This is the basic format for a news release. It should be double- or tripled-spaced so that it's easier for editors to handle.

If possible, make original copies for all news media. Use this sheet for your first page and plain bond for additional pages.

When writing a release stick to the models enclosed with this order. If you have any questions, you can call the Director's office for help. Rarely use more than two pages for a release; the press, if interested, will have plenty of questions.

DO 1300.3A
April 2, 1971

DEPARTMENT OF CORRECTIONS, D. C.
Office of the Director

Department Order 1300.3A

Subject: Public and News Media Relations

1. *Purpose.* To establish responsibilities, policies, and procedures to be followed by Institution, Community Correctional Center and other personnel in dealing with news media and the public.

2. *Definition.* News media includes newspapers, magazines and other periodicals, wire services, radio and television stations and networks, free-lance authors and photographers, and all others whose purpose is to convey information to the public.

3. *Responsibilities and Guidelines.* Superintendents, Community Correctional Center Administrators, Executive Staff, and other employees are involved in and responsible for good news and public relations within their areas of authority and responsibility. The Office of the Director has overall responsibility for the conduct of public and news media relations. The Department's Public Information Officer has been delegated the authority to coordinate these programs and is the key advisor to the Director in these matters. However, with the rapid expansion and changes occurring in the Department more staff will and must be involved in public and news contacts.

The essential elements are that everyone involved, (Superintendents, Community Correctional Center Administrators, Executive Staff and others), deal honestly and forthrightly with the news media and public and do so by being consistent with Department programs and policy. The Public Information Officer will open and expand lines of communications between the Director's Office and other elements of the Department. It is im-

perative that communications work both ways—from and to the Director's Office.

4. Policies.

a. Information about an inmate that is a matter of public record will be provided to any person who makes a legitimate inquiry during normal business hours. Questions concerning "legitimate" shall be referred to the Public Information Officer. Such information usually shall be limited to the inmate's name, offense for which convicted, length of sentence, date of sentencing, date of arrival or transfer, parole eligibility date, and date of expiration of sentence.

b. Contents of inmate files, except for the data in paragraph (a) are confidential. Legitimate requests from the news media for additional information about individual inmates shall be referred to the Public Information Officer in the Director's Office.

c. Representatives of the news media are encouraged by this Office to visit Department institutions, and other facilities for the purpose of preparing reports about institutional facilities, programs and activities. News representatives calling institutions should be advised that such requests must be approved by the Office of the Director through the Public Information Officer for visits. Usually, staff members from the institution will be designated to serve as guides. Such staff members may respond to questions about facilities, programs and activities but should refer all questions about policy and about individual inmates to institutional administrators.

d. Interviews with individual inmates may be permitted after written request to the Director and after an inmate agrees in writing on attached Information Release Form (see Attachment I). This kind of interview is distinguished from one in which a reporter may be talking with a number of inmates concerning a story about the institution or one of its programs. In such cases, agreement on the "ground rules" will be between the Superintendent and the reporter(s). If there is any question, the Public Information Officer is available for advice.

The Public Information Officer is also available for advice on handling of news media during escapes or other disturbances but it is the basic responsibility of the Superintendents or Community Correctional Center Administrators to make the announcements to the press. Follow-up reports in writing with copies of the release must be sent to the Public Information Officer.

e. Inmates have the right not to be photographed. News representatives must be requested to obtain permission before photographing inmates and should be advised that full front view photos of inmates are not encouraged but, if taken, releases must be signed by the inmates. (See Attachment I.) In cases of escape, official photos will be made available to the press.

f. News representatives may visit business establishments which employ work releasees; however, such requests should be submitted to the Associate Director for Community Services or Youth Services so that the permission of the employer is obtained in advance. The rules outlined in paragraphs (d) and (e) above apply equally in the work release situation.

g. Announcement of escapes, disturbances, accidents, and fatal or severe assaults should be made to local news media as promptly as possible by the Superintendent and others or by staff members designated by them. It is advisable to prepare a statement for possible release by telephone or messenger to all media, briefly stating the facts. A telephone report, followed by a written report, must be made to the Office of the Director immediately after an incident occurs. (See Attachment II.)

h. Death of an inmate by natural causes normally is not newsworthy. However, upon the death of an inmate who has attained national notoriety, the procedure outlined in paragraph (g) will be followed. (See Attachment III.) Other deaths occurring in Department facilities also make news; for example, those resulting from assaults on inmates or officers involved in law enforcement. Consequently, great caution should be used in reporting these. No comment should be made that would jeopardize either the possible defense or prosecution. If

there is any question, it is best to check with the Public Information Officer.

i. All announcements related to Department policy, such as changes in institutional missions, type of inmate population, or physical facilities, as well as announcements of changes in executive personnel, will be made by the Office of the Director. Media inquiries on such subjects should be referred to the Public Information Officer.

j. Copies of news releases issued by mail, messenger or telephone, should be sent to the Public Information Officer along with a distribution list. Clippings or summaries of newscasts should accompany these. Copies of releases and other materials issued by the Director's Office will be sent to the Executive Staff, Superintendents, and Community Correctional Center Administrators. Copies of all photographs also should be sent to the Public Information Officer together with the necessary identification and releases, if necessary.

k. Department policy and programs will be announced only by the Office of the Director. Members of the Executive Staff may make announcements about programs but they must be cleared through the Public Information Officer prior to release.

5. *Methods.*

a. Spot news, routine news and feature news which is cleared through the Public Information Officer will be prepared, printed and disseminated by Superintendents and others. A basic media list is attached as well as telephone numbers. (See Attachment IV.) Superintendents and others should add any media they feel necessary to the basic list. These additions should be reported to the Public Information Officer.

b. Fairness in dealing with the press is essential. Each member should get the same information concerning news released by Superintendents and others. However, if a reporter develops a story on his own, his "scoop" should be respected.

6. *Cancellation.* DO 1300.1 dated August 10, 1956, and DO 1300.3 dated November 2, 1966, are hereby cancelled.

7. *Effective Date.* This Order is effective upon receipt.

/s/ Kenneth L. Hardy
KENNETH L. HARDY
Director

DISTRIBUTION: "A" & "B" plus
President, Lodge 1550, AFGE
Secretary, Lodge 1550, AFGE

255

DO 1300.3A
Attachment (I)
April 2, 1971

DEPARTMENT OF CORRECTIONS
District of Columbia Government

INFORMATION RELEASE

Date: _____

I agree to the use of my picture and statements in (on) (*Name of publication, radio or TV station*) with the understanding it (they) is (are) to be used solely for informational or educational purposes. No use of it (them) may be made for commercial purposes, nor may it (they) be otherwise exploited.

cc: Director
Superintendent
Inmate file
Media

DO 1300.3A
Attachment (II)
April 2, 1971

DEPARTMENT OF CORRECTIONS, D. C.

ESCAPE RELEASE FORMAT

(Number) inmate(s) escaped (date and time) from (institution), (official), reported.

He (they) *briefly and factually describe the method of escape if it is known. Do not speculate. If it is not known, simply say the matter still is being investigated and refer questions to the Director's Office.*

(Official) said escape procedures were put into effect immediately and local and area law enforcement agencies have been notified.

The escapees are:

(List the names, offenses for which convicted, length of sentence, date of sentence, date of commitment or transfer, parole eligibility date, and date of expiration of sentence for each escapee.)

(Do not use the following in dealing with the news media.)

It is imperative that a copy of this report be on the Director's desk by 8:00 a.m. the day following the escape unless it occurs during the normal work day, in which case it should be sent to the Director's desk immediately.

DO 1300.3A
Attachment (II)
April 2, 1971

DEPARTMENT OF CORRECTIONS, D. C.

CAPTURE RELEASE FORMAT

(Official and institution) reported the capture of (number) inmate(s) who escaped (date).

The (agency which made the capture) apprehended (number, or him or her) at (location) on (date). (Then describe briefly and factually the circumstances of the capture).

The inmates who left (institution) on (date) were:
(list information detailed in DCDO 1300.

DO 1300.3A
Attachment (III)
April 2, 1971

OBITUARY RELEASE FORMAT

(This is only a basic obituary format. It should be used only when a well-known, "notorious" inmate dies in an institution. It also may be used to announce the death of a staff member.)

(*name, age*) died (*date*) following (a *long, short*) illness. (Or if true) as a result of wounds (*injuries*) suffered as a result an escape attempt, riot, fall, industrial accident (or whatever the facts are)

He had been confined at (*institution*) for (*time*). He was sentenced (*date*) for (*crime for which convicted*).

During his stay at _____ he (here list any major positive contributions the inmate may have made. There is little need to add anything else since the news media likely will have nearly complete information on the inmate.)

In the case of employees add:

Date of birth and place

Length of service

Career facts, including promotions, awards, citations

Publications, if any

Educational and other employment background

Date of marriage and to whom and where. It usually is advisable to use only his last marriage.

Number and names of children, and number of grandchildren

Professional and social affiliations.

Above all, check all the facts with the family. If all the information is not available, use what you have.

DO 1300.3A
Attachment (IV)
April 2, 1971

NEWS MEDIA

When calling in a news release, ask for the city desk in the case of newspapers or the news desk in the case of radio or TV. Sometimes the operator will ask if you want radio or TV news. Usually, ask for the TV news desk. The reporter to whom you give the story may sometimes ask if you'll agree to being recorded. Go ahead and do it, unless you have "mike fright." In that case, ask someone else to do it. All you have to do is read the release.

Frequently, reporters will ask for more details and speculation. Don't speculate, but give any additional facts you may have. If things get too hot call the Public Information Officer for guidance. Above all, keep all who should be informed.

Newspapers:

Post—223-6000
Star—543-5000
News—347-0411

Television:

WMAL—686-3020
737-2900
WTTG—244-5151
244-3474
WTOP—244-5678
WRC—362-4000

Radio: (Partial, but usually interested)

WAVA—522-1115
Metromedia—244-6220
WRC—362-4000
WMAL—732-2976
WUST—462-0011

Public Information Officer—Lorton Operator

**PUBLIC INFORMATION SERVICE
D. C. DEPARTMENT OF CORRECTIONS**

KENNETH L. HARDY, Director

[SEAL]

**L. B. Anderson
Public Information Officer
629-3533**

**Superintendent's name
Telephone number**

**DO 1300.3A
Attachment (V)
April 2, 1971**

NEWS RELEASE FORMAT

This is the basic format for a news release. It should be double- or tripled-spaced so that it's easier for editors to handle.

If possible, make original copies for all news media. Use this sheet for your first page and plain bond for additional pages. The Public Information Office will supply you with this masthead for your releases.

When writing a release, stick to the models enclosed with this order. If you have any questions, you can call the Public Information Officer for help. Rarely use more than two pages for a release; the press, if interested, will have plenty of questions.

DEPARTMENT OF CORRECTIONS, D. C.
Office of the Director

1300.3
DCDO 21-2

November 2, 1966
Index: Broad Admin-
istration

REQUEST FROM PUBLIC INFORMATION MEDIA

1. **PURPOSE.** This policy Statement establishes responsibilities, policies and procedures to be followed by institutional personnel in dealing with inquiries by representatives of the press.
2. **DEFINITION.** The press includes newspapers, magazines, and other periodicals, wire services, radio and television stations and networks, free-lance authors and photographers, and all others whose purpose is to convey information to a public audience.
3. **RESPONSIBILITIES.** The Superintendent of each institution shall be solely responsible for the contacts with the press. In his absence, the Acting Superintendent shall assume this responsibility. Other staff members shall refer all press inquiries to the Superintendent.
4. **POLICIES.**
 - a. Information about an inmate that is a matter of public record will be provided by or at the direction of the Superintendent to any person who makes proper inquiry during normal business hours. Such information shall be limited to the inmate's name, offense for which convicted, length of sentence, date of sentencing, date of arrival or transfer, parole eligibility date, and date of expiration of sentence.
 - b. Contents of inmate files, except for the data enumerated in paragraph (a) above, are confidential. Legitimate requests for additional information about individual inmates shall be referred to the Director's Office.

- c. Representatives of the press should be encouraged to visit Department institutions for the purpose of preparing reports about institutional facilities, programs and activities. Press representatives should be advised to make advance appointments for visits, and institution staff members should be designated to serve as guides. Such staff members may respond to questions about facilities, programs and activities but shall refer all questions about policy and about individual inmates to the Superintendent.
- d. Press representatives should not be permitted to interview inmates. This rule shall apply even where the inmate requests or seeks an interview. However, conversation may be permitted on approval from the Director's Office with inmates whose identity is not made known, if it is limited to the discussion of institutional facilities, programs and activities.
- e. Inmates have the right not to be photographed by the press. Visiting press representatives should be requested to obtain permission before photographing inmates and should be advised that full front view photos of inmates are not encouraged but, if taken, releases should be signed by the inmates. In cases of escape, official photos will be made available to the press.
- f. Press representatives may visit business establishments which employ work releases, if the permission of the employer is obtained in advance. The rules outlined in paragraphs (d) and (e) above apply equally in the work release situation.
- g. Announcements of escapes, disturbances, accidents and fatal or severe assaults shall be made to local news media as promptly as possible by the Director or by a staff member designated by him. It is advisable to prepare a statement for possible release by telephone or messenger to all media, briefly stating the facts.
- h. Death of an inmate by natural causes is not normally newsworthy. However, upon the death of an

inmate who has attained national notoriety, the procedure outlined in paragraph (g) above will be followed.

- i. All announcements related to Departmental policy, such as changes in institutional missions, type of inmate population, or physical facilities, as well as announcements of changes in executive personnel, will be made by the Director's Office. Press inquiries on such subjects shall be referred to the Director.
- j. Clippings from local media relating to institutional activities shall be collected and forwarded to the Director as part of each institution's quarterly report.

/s/ Kenneth L. Hardy
KENNETH L. HARDY
Acting Director

DEPARTMENT OF CORRECTIONS, D. C.
Office of the Director

1300.1
DCDO 11-7

August 10, 1956
INDEX: Broad Administrative Action All
Institutions

Information to Press and Public:

Permissible information for release to press.

Reference is made to Basic Regulation No. 11 in the Personnel Handbook "Release of Information". This regulation as viewed and reflected upon over years of experience is now interpreted as too rigid. Therefore, you are hereby directed to inform the members of your staff that anyone inquiring with reference to an inmate may be provided with the following basic information.

1. Whether or not the person is in custody.
2. The charges pending against him.
3. The amount of the bond in each case, if any.
4. The status of each case, including the sentence, if any.

The above is the maximum information which may be given in all cases without referral to the Director. The policy should continue, of course, that we will provide all reasonable information to official agencies with regard to an inmate or his record. However, inquiries made by a non-official source beyond the maximum which may be given to all inquirers should be referred to the Resident Superintendent for handling.

/s/ Donald Clemmer
DONALD CLEMMER
Director

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 467-72

THE WASHINGTON POST Co. and BEN H. BAGDIKIAN,
PLAINTIFFS

v.

RICHARD G. KLEINDIENST, Acting
Attorney General of the United States

and

NORMAN A. CARLSON, Director,
United States Bureau of Prisons, DEFENDANTS

PLAINTIFFS' MOTION TO RE-OPEN RECORD
FOR RECEIPT IN EVIDENCE OF
ADDITIONAL EXHIBIT

The plaintiffs, by their undersigned counsel, hereby move the Court for an order (1) re-opening the record of the hearing of March 23, 1972, herein for the purpose of receiving in evidence the exhibit attached to the affidavit of March 28, 1972, of plaintiff Bagdikian which is attached in support hereof, and (2) receiving the said exhibit in evidence. As grounds herefor, the plaintiffs state, as more fully appears from their memorandum filed in support hereof, that:

1. The said exhibit is a copy of one of a regular series of "Director's Letters" sent by defendant Carlson, Director of the Federal Bureau of Prisons, to the chief executive officers of all federal institutions under his administration and has attached to it a proposed "Policy Statement", as of January 13, 1972, purporting to authorize, under prescribed limitations, interviews by journalists with inmates of the institutions.

2. As appears from the Bagdikian affidavit attached hereto, the said exhibit was read over the

telephone, almost in its entirety, to Mr. Gerald Farkas, the Bureau's Public Relations Director, and was by him confirmed as an accurate copy of the letter and policy statement which had in fact been sent out on January 13, 1972, to the chief executive officers of the various institutions.

3. The exhibit shows on its face its clear relevance to the issues litigated at the hearing of March 23, 1972, and now before the Court for determination.

4. Counsel for the plaintiffs, on March 28, 1972, informed Assistant United States Attorney Michael Katz by telephone of their possession of the exhibit and suggested that Mr. Katz, after verifying through Mr. Farkas the accuracy of the copy, join counsel for the plaintiffs in a meeting with the Court to offer the exhibit in supplementation of the record herein. Counsel urged Mr. Katz to respond without delay, in view of the desire of all parties for the speediest possible adjudication of the issues. Mr. Katz called back very shortly thereafter and informed counsel for the plaintiffs that he considered the exhibit to have no relevance to the issues before the Court and, therefore, would not join the plaintiffs in a meeting with the Court for submission of the document.

Respectfully submitted,

**WILLIAMS, CONNOLLY &
CALIFANO**

By /s/ Joseph A. Califano, Jr.
JOSEPH A. CALIFANO, JR.

/s/ Charles H. Wilson, Jr.
CHARLES H. WILSON, JR.

/s/ Richard M. Cooper
RICHARD M. COOPER
1000 Hill Building
Washington, D. C. 20006
638-6565
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 467-72

THE WASHINGTON POST Co. and BEN H. BAGDIKIAN,
PLAINTIFFS

v.

RICHARD G. KLEINDIENST, Acting
Attorney General of the United States

and

NORMAN A. CARLSON, Director,
United States Bureau of Prisons, DEFENDANTS

AFFIDAVIT

DISTRICT OF COLUMBIA ss:

BEN H. BAGDIKIAN, being duly sworn deposes and says:

Being in possession of the attached exhibit, I telephoned Mr. Gerald Farkas, Director of Public Relations for the Federal Bureau of Prisons, to determine whether the exhibit is an accurate copy of a letter sent by Norman A. Carlson, Director of the Federal Bureau of Prisons, to the personnel mentioned in the exhibit. I told Mr. Farkas what the exhibit purported to be, including the letter, number and date whereupon he told me that he would look for an official copy of the original document for purposes of comparison. After a short period, he returned to the telephone and said that he had the official copy in hand.

I read the entire first page of the exhibit to Mr. Farkas and he verified that the contents of that page are identical to the copy of the original letter in possession of the Bureau. I then read to him verbatim the main body of the policy statement attached to the Director's

letter, in particular, under "*PROCEDURE*" paragraphs A, B, C, D, and E, except for the first 20 lines on page 4, which were paraphrased. He confirmed the identity of these passages with the corresponding passages in his copy.

/s/ Ben H. Bagdikian
BEN H. BAGDIKIAN

Subscribed and sworn to before me this 28th day of March, 1972.

/s/ Charles F. Paradise
Notary Public

CHARLES F. PARADISE
Notary Public
My Commission expires October 14, 1973

**DIRECTOR'S LETTER NUMBER 31,
JANUARY 13, 1972:**

TO: WARDENS, DIRECTORS & SUPT'S:

In Director's letter #30 of December 27, 1971, I informed you that we were contemplating a revision in our policy concerning inmate access to the press. As I indicated at that time, it is becoming increasingly apparent that unless we make the changes in the policy ourselves, the Federal Courts will in all probability intervene in our operations and require that we make the changes.

I am attaching a draft policy statement for your review and comment. Within the next several days, I am asking all of our wardens and top institutional staff to carefully review the statement and give us their candid comments and reactions. While I realize that many of our staff will not be enthusiastic over the proposed change, I think it is imperative that we approach the subject in an objective manner, and develop a realistic policy which can be lived with and at the same time, protect the 1st Amendment rights of offenders in our custody.

I recognize that this change in policy will have an impact on our operations. Many staff members will question the policy. Therefore, preparation, explanation and interpretation is essential. In making staff aware of the change, I hope you will indicate the Bureau is taking this step in order to comply with recent Federal Court decisions concerning the 1st Amendment rights of inmates. I would also suggest that you point out that several states have already taken this step and they have experienced only minor problems.

While this proposed policy statement is not one which requires consultation with the union, it is a major change and, therefore, I think it would be advisable for you to share a copy of the draft with your Union President and ask him for his comments and suggestions. Again, I want to emphasize the necessity of fully interpreting the reasons for the change in policy; a number of court decisions make it imperative that we do so at an early

date in order to avoid the possibility of the courts directly intervening and making decisions for us.

Please send a memo by January 21 to Gene Barkin giving us your comments and reactions to the proposed policy statement. In addition, please let us know any significant impact you expect this will have on our operations.

/s/ NAC Dtr

**THIS LETTER IS NOT FOR PUBLICATION, BROAD
DISSEMINATION OR ATTRIBUTION**

POLICY STATEMENT

SUBJECT: Inmate interviews with representatives of the news media.

POLICY: The Bureau of Prisons recognizes the desirability of affording inmates reasonable access to the news media. The contacts, in a prison setting, must be regulated to insure the orderly and safe operation of the institution.

PROCEDURE:

A. Eligibility: This policy statement applies to the news media, which is defined as follows.

A newspaper entitled to second class mailing privileges; a news magazine of general distribution; an international news service; a radio or television network or station.

B. INMATE INITIATION: An inmate may request to write to or talk to a representative, specified by name or title, of the news media. Correspondence to a newsman will be sent as special purpose mail, unless the institution is aware that the addressee in the past has failed or refused to abide by the Bureau's regulations on inmate interviews. This correspondence will be inspected, solely to insure that there is no contraband enclosed, and that the mail is not being used to contact unauthorized correspondents. In each instance of refused correspondence, the inmate will be advised of the reason and that he may contact another news media representative if he desires. The Executive Assistant to the Director will be fully advised. If a newsman responds to an inmate that he wishes to conduct a personal interview at the institution, this will be permitted subject to the general rules below.

C. NEWSMAN INITIATION: A representative of the news media may request to correspond with or interview a particular inmate. The request should be directed to the Chief Executive Officer of the in-

stitution. The newsman will be advised of the Bureau of Prisons regulations and will be asked to indicate that he agrees to them. The intended subject of the interview will be given, and the request shall be discussed with the inmate, to see if he agrees to the correspondence or interview. If the inmate wishes to proceed, he will so indicate in writing, and the request will be approved, subject to the following limitations and regulations.

Correspondence between newsmen and inmates will be sent as special purpose mail. It will be inspected, to insure that there is no contraband enclosed, and that the mail is not being used to contact unauthorized correspondents. Correspondence and interviews may be disapproved, if the institution is aware that the addressee in the past has failed or refused to abide by the Bureau's regulations on inmate correspondence or interviews at any institution, or if the newsman does not agree to the conditions required by the Bureau. In case of violation of any law or any Bureau regulation or institution regulations, the correspondence or interviews will be terminated.

D. GENERAL PROVISIONS FOR INTERVIEWS: Interviews will be between an individual inmate and an individual newsman. A member of the institution staff may attend the interview in the discretion of the Chief Executive Officer, and will ordinarily tape the entire interview, unless the Chief Executive Officer deems it unnecessary. Any tape so obtained will be kept with the inmates central records for at least two years, and will be played for the inmate or his attorney at his request. The interview will be conducted at a time and place established by the Chief Executive Officer. The media representative may use a tape recorder to record the interview. All material obtained through these interviews may not be copyrighted. It must be made available to all media requesting it after first publication. The interviewer must notify the Chief Executive

Officer of the institution of the date of use of the interview material. The inmate shall not receive any compensation, nor anything of value for his interview. No photographs or film, identifying an individual inmate, may be taken. The institution will provide a photograph of the inmate upon request, and if the inmate approves the release of the photograph. An interview will be disapproved if the inmate is physically or mentally unable to participate. This shall be verified by a medical officer's diagnosis, to be placed in the inmates file, substantiating the reasons for disapproval, as follows.

(1) To grant an interview would be a danger to the inmates health, or to the health or safety of the interviewer; or (2) the inmate is mentally incompetent to give a rational factual statement.

The newsmen shall be notified of this basis for declining the interview. If the inmate is a juvenile, the interview shall be granted only if the juvenile agrees, and there is written consent from his parents or guardian.

The interview will normally be limited to one hour in length. The Chief Executive Officer may approve a longer interview. Each inmate will be limited to no more than two interviews per month. If the Chief Executive Officer determines that interviews are imposing a serious drain on institution resources, interview time for the entire institution may accordingly be limited to five hours per week.

An inmate in segregation status will be limited to one-hour interview per month. An inmate in restricted, holdover, or hospital status may be similarly limited, if it is determined to be necessary to provide proper staff supervision.

In the event of an internal disturbance, the Chief Executive Officer may suspend all interviews. Correspondence authorized under this Policy Statement will not be suspended. During the disturbance, information concerning the current situation will be

released at least twice daily to the news media. When a disturbance occurs, or whenever the frequency for interviews or information reaches a volume which is determined by the Chief Executive Officer to warrant such limitation, a press pool may be established. In this situation, all media shall be notified that selected representatives shall be admitted to the institution to conduct interviews under such guidelines as the Chief Executive Officer establishes. All material generated from such a press pool shall be made available to all media without right of first publication or broadcast. The press pool shall be composed of no more than one representative from each of the following groups. (1) the international news service; (2) the television networks, or outlets; (3) the radio networks, or outlets; (4) newsmagazines; (5) newspapers; (6) all media in the local community where the institution is located.

The representative shall be selected by members of the group. These regulations apply to all inmates in federal institutions. When an inmate has any pending unsolved litigation, interviews shall be approved only following notification to and approval by the prisoners attorney and the U.S. Attorney in the district where the litigation is pending.

Representatives of the media are advised that, in the event that statements naming individual inmates or staff members are made, the institution should be advised of the fact before publication or dissemination. In such instance, the institution shall give all possible assistance in providing background and a specific report on the statement provided by the inmate.

E. EXCEPTIONS: Requests for exceptions to the above regulations may be made to the Director. Any disputes as to meaning or application of the regulations will be resolved by the Director.

* The following is taken from a letter recently received from the Legal Defense Fund, 10 Columbus Circle, New York, New York 10019. "Last week I met with Mr. Carlson and others for the purpose of personally urging appropriate changes in Bureau policies concerning federal prisoners 1st Amendment rights in the areas of mail communication and others. We were advised that some changes are presently under consideration. If they do not, within a reasonable, but short, period of time, make the necessary revisions that the law mandates, we will have no alternative but to go into court. We'll see what, if anything, they come up within the next few weeks.

Again, any problems along these lines should be referred to Mr. Stanley A. Bass of the above address.

* This section is not part of the "Provided Policy Statement".

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 467-72

THE WASHINGTON POST Co., *et al.*, PLAINTIFFS,

-vs-

RICHARD G. KLEINDIENST, *et al.*, DEFENDANTS.MEMORANDUM OF POINTS AND AUTHORITIES IN
OPPOSITION TO PLAINTIFFS' MOTION TO RE-
OPEN RECORD FOR RECEIPT IN EVIDENCE OF
ADDITIONAL EXHIBIT*Statement*

Defendants, by their attorney, the United States Attorney for the District of Columbia, hereby oppose plaintiffs' motion to reopen the record herein for receipt in evidence of an additional exhibit, *viz.*, a "Director's Letter" from the Director of the Bureau of Prisons to the chief executive officers of the various institutions under his direction, on the subject of inmate access to the press. The letter, dated January 13, 1972, circulates to the wardens for review and comment a draft policy statement that would have authorized interviews * between inmates and news media representatives, but would not have allowed confidential written communications, which are permitted under the terms of the policy statement which is in force.

Argument

Defendants submit that the proposed exhibit should not be admitted in evidence herein on the ground of irrelevancy. The narrow issue before the Court in this cause is that of whether the Policy Statement which is in force

* It should be noted that the interviews would not have been private, as the draft would authorize a staff member to be present, and to record the interview.

and effect is constitutional. That some other policy may have been under consideration, but not eventually adopted, has no bearing on this question. As the Court indicated at the close of the evidentiary hearing, its role is not to select from alternative policies, but to rule on the legality of the one which is before the Court (Tr. 222).

Plaintiffs assert that the Court should consider the Director's Letter because the statement contained therein to the effect that "several states" experienced only minor difficulties in connection with administration of their interview policies "estops" the Bureau of Prisons from adopting a no-interview policy based on "a contrary assumption." (Memorandum in support of motion, pp. 2-3). While the state experience was taken into account in formulating the Policy Statement, it is incorrect to say that Policy Statement was "based on" that experience. In fact, the record shows that it was arrived at largely on the basis of an assessment by the Director, with the assistance of his staff and line personnel, of the problem in the context of the particular nature of the Federal prison system and the make up of its prison population. In addition, plaintiffs' contention, if adopted, would inhibit the normal process of decision-making which is desirable for sound institutional management. The Director's letter on its face is no more than a tentative proposal circulated for review, advice and comment to those whose responsibility it would be to carry it out. In an affidavit attached hereto, Mr. Carlson states not only that this is the case, but also that the statement in the Letter respecting the state experience was based on limited staff contacts between personnel of the Bureau of Prisons and of certain state correctional authorities, and that later further investigation revealed that the statement was not an accurate reflection of the situation.

As to plaintiffs' further contention that the Letter "shows, beyond question, the feasibility of a prison interview policy far less restrictive of First Amendment rights than the defendants' present policy of no interviews," it has certainly not been demonstrated that the proposed policy would have been "feasible." In the affidavit attached hereto, Mr. Carlson states that it was re-

jected because it was ultimately determined *not* to be feasible. Moreover, their conclusion that the proposed policy statement would have, *in toto*, resulted in a less restrictive approach to the problem, is certainly open to debate.

Finally, it is clear that the document plaintiff seeks to introduce is an internal working paper, "an intra-government [document] reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated." *Carl Zeiss Stiftung v. V.E.B. Carl Zeiss, Jena*, 40 F.R.D. 318, 324 (D. D.C., 1966), *aff'd*, 128 U.S.App. D.C. 10, 384 F.2d 979 (1967), *cert. denied*, 389 U.S. 952. As such, it would not be available to a party in litigation. Indeed, nor would it be required to be disclosed under the Freedom of Information Act, see 5 U.S.C. § 552(b)(5); *Ackerley v. Ley*, 137 U.S.App.D.C. 133, 137-138,* 420 F.2d 1336, 1340-1341 (1969). The document is no more admissible at trial than it is subject to production or discovery. *Carl Zeiss Stiftung v. V.E.B. Carl Zeiss, Jena*, *supra*, 40 F.R.D. at 323, n. 9., and authorities cited therein. Therefore, plaintiff can be in no better position as a result of his having obtained the document in some unknown fashion than he would be if he were seeking its production by discovery processes. The use plaintiffs now seek to make of the document which contains essentially "deliberations" and proposals which were never finally adopted sustains the wisdom of the exclusionary rule respecting such documents.

* Cases or authorities chiefly relied upon are marked by asterisks.

Conclusion

For the reasons herein set forth, plaintiffs' motion to reopen the record should be denied.

Harold H. Titus, Jr.
United States Attorney

Joseph M. Hannon
Assistant United States Attorney

Michael A. Katz
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing Memorandum of Points and Authorities in Opposition to Plaintiffs' Motion to Re-Open Record for Receipt in Evidence of Additional Exhibit has been made upon plaintiffs by mailing a copy thereof to their attorney, Joseph A. Califano, Jr., Esq. and Richard M. Cooper, Esq., Williams, Connolly & Califano, 1000 Hill Building, Washington, D. C. 20006, this 5th day of April, 1972.

Michael A. Katz
Assistant United States Attorney

AFFIDAVIT

District)
 of) ss:
Columbia)

I, Norman A. Carlson, being duly sworn, do hereby state that I am the Director of the Federal Bureau of Prisons, United States Department of Justice. In my capacity as Director, I am responsible for the development and promulgation of the policies which govern the operation of the various institutions which comprise this Bureau.

I further certify that the draft of a proposed policy statement which accompanied Director's Letter #31 dated January 13, 1972, was the result of staffing by personnel of the Bureau Central Office. The proposal was to serve as a vehicle by which the views of our principal staff at institutions would be obtained. It also contemplated an exchange of views with a number of state correctional administrators. The draft was therefore issued prior to a number of meetings and consultations which were intended to be held before a policy statement would actually be promulgated. Therefore subsequent to the Director's letter the following steps were taken:

1. A survey of the views of the Bureau of Prisons top level institutional people.

2. This proposed policy was discussed with a number of state correctional administrators at their Association meeting at Atlanta, Georgia on January 27, 1972.

3. On February 7th and 8th the Wardens of our major adult institutions met in the Washington area to discuss in depth a number of proposed changes including the proposed draft. Reference to the experiences of "several states" in the Director's letter was based upon limited contact by our staff people with staff people in several states.

4. Subsequently I had personally talked with a number of state administrators. This led me to the conclusion that a number of the state policies which allow personal

interviews are within a warden's discretion. That concept was rejected by me.

After the discussions and consultations indicated above, I concluded that the proposed policy was not feasible. Instead the present policy was adopted. In adopting the present policy it was felt that in some respects, although obviously not in all, the adopted policy would afford greater latitude because it provides for sealed uncensored mail to all of the media, whereas the proposed policy statement included a narrower definition of the term "news media" and did not provide for sealed outgoing correspondence. To reiterate the proposed draft was rejected and the present policy was adopted after a further in-depth study essentially for the reasons outlined in my testimony.

Norman A. Carlson
Director, Bureau of Prisons

Subscribed and sworn to before me this — day of
April 1972.

Notary Public

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed 4/14/72]

Civil No. 467-72

THE WASHINGTON POST CO., ET AL., PLAINTIFF.

vs.

RICHARD G. KLEINDIENST, ET AL., DEFENDANT.

NOTICE OF APPEAL

Notice is hereby given this 14th day of April, 1972, that Defendants hereby appeal to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 11th day of April, 1972 in favor of Defendants against said Plaintiffs.

/s/ **MAK**
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 467-72

THE WASHINGTON POST COMPANY

and

BEN H. BAGDIKIAN, PLAINTIFFS

v.

RICHARD G. KLEINDIENST, Attorney General
of the United States

and

NORMAN A. CARLSON, Director, United States
Bureau of Prisons, DEFENDANTS

Washington, D. C.
November 21, 1972

The above-entitled cause came on for further hearing
before the HONORABLE GERHARD A. GESELL,
United States District Judge, at 9:30 a.m.

APPEARANCES:

JOSEPH A. CALIFANO, Jr., Esq.,
CHARLES H. WILSON, Jr., Esq.,
RICHARD M. COOPER, Esq.,
Of: WILLIAMS, CONNOLLY & CALIFANO,
Counsel for Plaintiffs

ARNOLD T. AIKENS,
MICHAEL A. KATZ,
Assistant United States Attorneys,
Counsel for Defendants

[2]

CONTENTS

Witnesses	Direct	Cross	Redirect	Recross
<i>Plaintiffs' :</i>				
ARTHUR L. LIMAN				
By Mr. Califano	4			
By Mr. Katz		19		
By Mr. Califano			24	
ROY M. FISHER				
By Mr. Wilson	26			
By Mr. Katz		49		
JOHN O. BOONE				
By Mr. Califano	55		110-A	
By Mr. Katz		98		110-C
TIMOTHY LELAND				
By Mr. Wilson	112			
By Mr. Katz		131		
<i>Defendants' :</i>				
NOAH L. ALLDREDGE				
By Mr. Katz	139		189	
By Mr. Califano		166		
LOUIE L. WAINWRIGHT				
By Mr. Katz	191		220	
By Mr. Califano		210		221
Exhibits		For Identification	In Evidence	

Plaintiffs' :

No. 9	Bantam edition of Attica Report	4	7
No. 10	Study by Gary C. Lawrence and David L. Grey	36	49
No. 11	Letter dated 10/3/72 from Wainwright to Califano	210	222

[2-A]

Exhibits	For Identification	In Evidence
<i>Government's:</i>		
No. 1	156	161
Nos. 2, 3, 4	158	161
Nos. 5-A-J	200	200
Nos. 6-A-J	201	201

[3]

PROCEEDINGS

THE DEPUTY CLERK: Civil Action No. 467-72, The Washington Post Company, et al., v. Richard Kleindienst, et al. Mr. Joseph A. Califano, Mr. Charles H. Wilson and Mr. Richard M. Cooper for the Plaintiffs. Mr. Michael A. Katz for the Defendants.

MR. KATZ: Will you also enter the appearance of Mr. Arnold T. Aikens, Assistant United States Attorney.

THE COURT: We ought to change the caption of this case, should we not? Mr. Kleindienst is no more Acting Attorney General. We will just consider that done.

All right, you may proceed, Mr. Califano.

MR. CALIFANO: May it please the Court, we have this morning one witness in addition to the witnesses we mentioned at the pretrial conference. We mentioned at the pretrial conference Mr. Arthur Liman, Mr. John Boone, Mr. Roy Fisher and Mr. Timothy Leland.

I mentioned to Government counsel yesterday that there were three possible depositions we had indicated to the Court we might take after the hearing today.

THE COURT: Yes.

MR. CALIFANO: We will simply put one of those individuals, Dr. Robert Gould, on the stand during the presentation of our case.

THE COURT: Very well, you may proceed.

[4] MR. CALIFANO: I would like to call Mr. Liman. WHEREUPON—

ARTHUR L. LIMAN

was called as a witness by the Plaintiffs, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CALIFANO:

Q Would you please state your name, address and current occupation?

A Arthur L. Liman, L-I-M-A-N, 135 Central Park West, New York City. I am an attorney, a member of the Bar of the State of New York.

Q Have you ever been a journalist, Mr. Liman?

A No.

MR. CALIFANO: May I mark this for identification Plaintiffs' Exhibit No. 9.

THE DEPUTY CLERK: Plaintiffs' Exhibit No. 9 marked for identification.

(Whereupon, the Bantam edition of the Attica Report was marked Plaintiffs' Exhibit No. 9, for identification.)

BY MR. CALIFANO:

Q Mr. Liman, were you associated with the New York State Special Commission on Attica?

[5] A I was.

Q Would you state your association with that Commission, please?

A I was general counsel of the Commission.

Q What were your responsibilities as general counsel of the Commission?

A My duties were to conduct the investigation for the Commission, to collate, review the evidence with the Commission, to counsel the Commission on its conclusions, to present the witnesses at the public hearing, and to prepare the draft of the report to reflect the conclusions which the Commission reached.

Q Over what period of time did your work with the Commission extend?

A We actually started in November of 1971 and our report was filed on September 13, 1972.

Q During that period of time, how much of your own time did you devote to the work of the Commission?

A It would be at least 2,000 hours.

Q Would you describe the size of your staff and the kind of members you had on the staff and as consultants?

A You dropped your voice with the last part of the question.

Q Would you please describe your staff, the size of the staff, and the nature of the qualifications of staff [6] members and consultants to the Commission?

A We had approximately 36 permanent members at the peak of the Commission's activity. Of these, approximately

24 were attorneys, or investigators, and the preponderance were attorneys. There may have been four or five of the 24 who were not admitted to the Bar. This group of 24 was actively engaged in conducting the interviews and pursuing various investigative leads.

In addition, we were assisted by a complement of some 60 part-time members, assistants to the staff. Most of these were lawyers; some of them were law students; and they worked on a per diem basis in conducting interviews for the staff.

Q Did you have any expert consultants other than attorneys?

A Yes, we had a psychiatric consultant; we had a pathologist; we had a ballistics expert; we had a consultant on medical services. We listed them in the report. These are the ones that come to mind at this moment.

Q Mr. Liman, I show you Plaintiffs' Exhibit No. 9, for identification. Would you please inform the Court what that is?

A Well, this is the Bantam edition of the Commission's Report. It is identical with the official report except for the centerfold of pictures, photographs which were released by the Commission but which are not part of the Commission's official report; and the cover was added by Bantam.

[7] **MR. CALIFANO:** We offer Plaintiffs' Exhibit No. 9 in evidence, Your Honor.

(Whereupon, Plaintiffs' Exhibit No. 9 was received in evidence.)

MR. CALIFANO: We request the Court to take judicial notice of it.

THE COURT: I think I already advised that I would take judicial notice of the report. I have read the report twice. I have also seen the film that the Commission released in which Mr. Liman plays a part.

BY MR. CALIFANO:

Q Mr. Liman, in the course of your work as the counsel for the New York State Special Commission On Attica, did you conduct interviews with inmates and other persons?

A Yes.

Q Approximately how many interviews were conducted?

A Three thousand.

Q How many of these were with inmates?

A Sixteen hundred.

Q To your knowledge, has there ever been a project which interviewed as many inmates as this in a study of a prison?

A Insofar as we could determine, no.

Q How did you develop your interviewing program? Would you please describe that for the Court.

[8] A Well, we started with the goal of attempting to see every person who had some personal knowledge of either the conditions at Attica before the uprising, or the facts of the uprising, or the police action to put down the uprising.

We planned from the outset to see each person privately, without anybody present but a Commission member or a staff member.

We met in November before embarking on the interviews, with groups of correction officers and inmates at Attica, selected at random, to explain to them our mission and the techniques that we intended to use. There were questions, particularly by the inmates, at that time in these groups about what steps we intended to take to insure that the interviews would be confidential and would not be overheard by the administration, since they would have to be conducted on prison premises. We told them that we would work that out so that they would have privacy in speaking to us.

Following this, I, personally, began interviewing certain inmates to attempt to develop a format of interview, to see what the problems were in speaking to inmates, how long interviews would go, what were sensitive areas, all with a view toward developing a form of outline that could be used by the staff as it grew.

Out of this experience of interviewing inmates individually, we developed a questionnaire, an outline, really; [9] and at that time we began the interviewing of inmates, one-by-one, for the whole institution.

Now, we were provided by the Attica officials with space on the top floor of the infirmary that consisted of over a dozen separate rooms. Staff members would report to the third floor; inmates were brought there, in accordance with their institutional number, starting with the lowest number first; so that we saw the oldest inmates, the inmates who had been in Attica the longest first.

They were brought in; sat with a staff member; nobody was present other than the inmate and the staff member; and the interview was conducted. The staff member would note down the substance of what the inmate said, where pertinent.

When he finished with the interview, another inmate would be brought in. And we followed basically the same procedure with correction officers, state troopers, National Guardsmen, seeing them on an individual basis, without any surveillance by persons outside of the Commission.

Q What was the objective of the interviews?

A The objective of the interviews was to determine what were the conditions at Attica, what were the events that led to the uprising, what happened during the uprising, why did the negotiations fail, what happened during the police assault, were there any reprisals afterward, and what were the conditions at Attica at the time that we were conducting our interviews.

[10] That was, in substance, the mandate of this Commission.

Q Mr. Liman, just for the record, would you clear up what you mean by staff member in your prior answer?

A I mean by staff member a member of the staff of the New York State Special Commission On Attica.

Q Mr. Liman, did you conduct group interviews?

A We had several group interviews in circumstances where the inmates refused to be seen alone.

Q Were they as satisfactory for your purposes as the individual private interviews?

A No.

Q Why not?

A We found that in the group interviews the inmates tended to give us rhetoric, rather than facts; and that we were experiencing virtually the same phenomena that the

observers and press that entered the D Yard during the uprising had faced, namely, that in the interest of showing solidarity, inmates were making speeches to us rather than confiding what I knew in many cases to be the fact.

I should add that the basic problem in conducting interviews at a prison is that it is a society in which inmates face sanctions and rewards not just from the administration but from other inmates; and that when an inmate sees you in private, he will tell you things about the administration that may not only be unfavorable but may in many cases be favorable. [11] I found that when we saw them in group, there was a tendency to say nothing favorable about the administration and instead simply to make a speech about how horrible conditions were. In fact, many of the inmates who would say this in group would say something different when they were seen alone.

Q Did you, yourself, conduct interviews; and if so, about how many?

A Well, I conducted the initial interviews that led up to our technique. I conducted interviews after that throughout the period that we were conducting them on a spot basis; and I would estimate that of the 1600 inmate interviews that we conducted, I must have conducted at least 75. That is, of inmates. I also conducted interviews of correctional officers and others.

Q Do you believe that you obtained from confidential and private interviews information that could not have been obtained in other ways?

A Oh, yes.

Q Do you have any examples of that, Mr. Liman?

A Well, there are examples throughout the report. If you want me to, I can enumerate them rather briefly.

Q Just a couple, yes.

A In the section on prison conditions, I think that the extent of racism was something which we got more perception of from the private interviews than we got from the public and group interviews. In particular, inmates were more willing to [12] talk about racism, not simply by the administration but also racism among inmates; whereas, when they were interviewed in the presence of

other inmates, they would ignore the racism by inmates altogether.

The presence of homosexuality, and both forcible and consensual, was a subject on which inmates appeared to talk more freely when they were in a private interview than when they were in group or when they were talking publicly.

There is something which is not stressed in our description of conditions because we found it not to be a major factor at Attica, and that is the question or the issue of physical brutality toward inmates. The press, before this investigation, had played that up as the major grievance at Attica. We found, when we talked to inmates privately, that the incidence of physical confrontation between officers and inmates was rather limited, and that the real grievance was not about those incidents, but rather about what they would feel was a form of psychic repression, depriving people of their manhood. Therefore, I think a lot of the myth about physical beatings was dispelled.

We were able to ascertain the extent of tension at the institution, the role of groups at the institution before the uprising. We were able to ascertain the method that the officer, who died during the taking of the prison by the inmates, had died. We were able to ascertain the extent to which inmates [13] ended up in the Yard, either through fear or through compulsion by others, as opposed to acts of volition by themselves.

In general, when talking publicly, particularly during the uprising, the inmates said that this was a great act of voluntary, concerted action; whereas, in privacy, you got a very different picture of the circumstances under which people entered the Yard.

We were able to obtain the details of the reprisals that took place after the uprising. That was a subject on which inmates were very reluctant to testify publicly, when we had our public hearings, because of fear of reprisals from the Parole Board or other bodies. Not that I am saying that they would have taken place, but the inmates feared they would take place.

We were able to ascertain the fact that a majority of the inmates really were prepared to accept the 28 points,

but for various reasons never were willing to express themselves on that in the Yard. We were able to detail what the factors were that led them to remain silent.

We were also to ascertain the role of the security guard at the uprising. We were able to ascertain the role that terror played in the Yard. We were able to ascertain the extent of acts of homosexual rape. We were able to determine the circumstances of the deaths of three of the inmates who died before the re-taking.

[14] We were able to determine the fact that several inmates, including D. L. Barkley, who were rumored to have been killed after the prison was re-taken, actually died during the initial seconds of the police assault. That was one that posed a particular problem, because inmates in group tended to rely on rhetoric, saying that he was murdered after the uprising had ended; whereas, in privacy, some of them, including his friends, were willing to talk about the circumstances of his death.

Above all, we were able to get a glimpse of what we have described as the dehumanizing conditions that existed in the prison which inmates were willing to cite fact about in private interviews; whereas, when you saw them in groups, it was again very conclusory-type statements.

Q Mr. Liman, could you have gotten this kind of information and these kinds of facts by corresponding with the inmates and having them correspond back with you?

A I don't believe that you can by correspondence.

Q Why?

A Well, it is the same reason that I have always found, as a lawyer, that written interrogatories are not as effective as oral cross-examination, in talking to witnesses. Because you don't have the opportunity of an immediate follow-up.

Also, in an institution like Attica, you are dealing with a number of people who are not literate; and you are also, when you submit written questions, running the risk that the [15] answers that you get will not be the answers of that inmate but rather will be the answers of everybody he has talked to, shown the questionnaire to; and that we are getting again a response that reflects peer group pressure, or administration pressure, rather than the conviction of the inmate, himself.

Q Mr. Liman, would you give the Court a sense of how you would define or describe a Big Wheel in prison?

A You have asked me that question before. My impression would be that a Big Wheel would be a leader.

Now, Big Wheel, is not a term that I ever heard at Attica. But I assume that the Big Wheel is a person who commands a following; and they were referred to there as leaders, not as Big Wheels. I would distinguish that from a loudmouth, or person who has a swelled head, who may command no following, but who will sound off at every opportunity.

Q To your knowledge, did your interviews create any Big Wheels at Attica or any leaders at Attica?

A No.

Q Have you stayed in touch with the situation at Attica in a general way since your report was issued?

A Yes. I receive letters from inmates we interviewed. I have spoken to Russell Oswald, the Commissioner, from time to time. I was up at Attica approximately a month after we rendered our report, to see what things were like, and to determine what the reaction was to the report by inmates and [16] correction officers.

Q Did the publication of your report, so far as you know from those contacts, result in the creation of any leaders or Big Wheels at Attica?

A No.

I don't know if you want me to amplify, but the report makes it clear that at Attica there were people who had leadership qualities and they came to the fore during the uprising. We described what it was that these people had in their personalities that led to them coming to the fore. They are the things that you would observe in almost any kind of institutional life. Some of them were superior athletes. Some of them were leaders of the Muslem group, or the various groups that function within the institution. Some of them were superior jailhouse lawyers. These were people whose qualities had been demonstrated before in those respects, who had followings before, and who were called upon when the inmates found themselves in the Yard to play a role as spokesmen.

Q Were press interviews permitted at Attica prior to the incidents that your Commission studied?

A To my knowledge, no.

THE COURT: Are they now permitted, Mr. Liman?

THE WITNESS: Yes, they are permitted under various circumstances; but as I understand the practice today, if a newsman knows the name of an inmate and obtains his consent, [17] he can conduct an interview. I have also talked to some newsmen who wandered through the institution, found an inmate, and were then permitted to interview him.

BY MR. CALIFANO:

Q Were these interviews, to your knowledge, within or without the presence of correctional officials?

A I am not certain, Mr. Califano. It is a relatively new procedure at Attica.

Q I would refer you to Page XVII of the Bantam edition of the Attica Report, where the Commission recommends, and I quote:

"The establishment of regular procedures to assure access of the press to the prisons."

Is that correct?

A That is right.

Q What types of press access are contemplated by that recommendation?

A Well, we said:

"The establishment of regular procedures to assure access of the press to the prisons."

And we go on to describe the fact that prisons had, essentially, been invisible, and that the public was really unknowledgeable and uncaring about the prisons; and what we contemplated, and what we discussed among the Commission, was a continuing access of the press that would provide facts of [18] the type that we developed about prison conditions on a regular basis, as opposed to having that done on a crash basis only after there is some great tragedy.

Since the Commission's experience was that the only interviews that were fruitful for us were those which were conducted privately, we really presumed that the press would be given the opportunity, under reasonable regulations, to see inmates and to question them about conditions.

THE COURT: In the course of the work of the Commission, Mr. Liman, was there any contact by you or others in the Commission with judges who had concern one way or another as to what was happening to people that they had committed to this institute?

THE WITNESS: Well, not—Judge, it wasn't done on a formal basis, but all of us know a number of judges. I have a partner who went onto the bench. Even before I undertook this position, I had had discussion with judges about the fact that they went through a lot of agony and pain to sentence a person, and then they lost total control over him, once he went to the institution. They even lost knowledge of what was really happening to him there. That was a fact that I have heard for a number of years and it was something that I heard more often when I was on the Commission, simply because people came to me and talked to me about it.

MR. CALIFANO: I have no further questions, Your Honor.

[19]

CROSS-EXAMINATION

BY MR. KATZ:

Q Mr. Liman, what was the period in which the Attica disturbance took place?

A September 9 through 13, 1971.

Q And when was the Commission which prepared the report brought into existence?

A Well, there are various steps that took place to bring it into existence, but formally, it came into existence on November 15, 1971. De facto, it existed earlier. It was simply that the order hadn't been signed. In New York, the procedure had been to have commissions exist on the basis of a press release as opposed to an Executive Order. We insisted that we get the Executive Order before we conducted our interviews.

Q Who was the authority that appointed the Commission?

A Technically, the authority was the Governor, under Executive Law, Section 6.

The Governor acted jointly with the legislative leaders in calling upon Chief Judge Fuld, and the presiding Justices of the Appellate Division, to select the nine members of the Commission; and then the Governor, using his power under the Executive Law, under what we call the Morgan's Commission Act, actually gave the Commission its powers.

Q Was the function of Chief Judge Fuld and the Justices [20] of the Appellate Division only to appoint the members of the Commission?

A Just to select them, that is right, and that is all.

Q To whom was the report of the Commission supposed to be made?

A To the Governor, the Legislature and the public, simultaneously.

Q Was the Commission supposed to make certain specific findings and recommendations?

A It was supposed to make fact findings. The mandate was to determine and report on the facts and circumstances leading up to, during and after the uprising.

Q So that the report principally was supposed to be merely a factual account of what occurred at Attica?

A That is not completely accurate. Among the facts that we were to ascertain were the causes of the uprising, and such judgmental questions as whether the Governor should have come, whether the assault was well planned; and I think you get into more than simply narrating facts, when your mandate is that broad.

Q Does everything which is contained in the volume which has been identified as Plaintiffs' Exhibit 9 represent a finding of the Commission?

A Yes, sir, a finding or a conclusion.

Q Were those findings of the Commission subject to the [21] approval of any further authority?

A No.

Q You testified, sir, that you never heard the term, Big Wheel, used by the persons whom you interviewed.

A That would seem—

Q At Attica.

A They not only didn't use it, but having had some exposure to their vocabularies, that would not be part of them. It seems to me to be an old-fashioned word.

Q On the basis of this exposure which you have had to the vernacular of Attica, what other expressions do you know of which could be considered more or less equivalent of the term, Big Wheel?

A I think that the term, leader, is the one that inmates there used. Leader, or they would refer to the person specifically, head of the Muslems.

Q These are individuals who had a following among other inmates?

A Yes, they were inmates who wielded power.

Q And were many of these identified as persons who played leading roles in the disturbance that occurred at Attica?

A I would not feel that that was a fair characterization. Our conclusions were that they played no role in bringing about the uprising; but, as we make clear in the report, they acted as spokesmen during the uprising and during negotiations.

[22] Q So that it is your testimony, sir, that while these inmate leaders may not have precipitated the uprising—

A Did not.

Q —they played leading roles in it, once it occurred?

A They did not, I said, precipitate.

Q That is what I said.

A The uprising. And they played the role of spokesman during the uprising.

Q Do you know whether or not the report, after it was completed, was circulated and read by the inmates at Attica?

A Yes.

Q Now, you have testified, sir, with respect to the current interview policy which prevails at Attica.

Is that based on your personal knowledge?

A It is based on my knowledge of what has taken place there, plus talking to newsmen, as well as having had some conversations with the officials there. But I do not know, as I said before, whether the correction officer is present or not. It is just something that I didn't ask.

Q Do you know whether they have a policy in writing on this subject?

A I suspect that they would, but I don't know.

Q You don't know.

Do you have any knowledge as to whether or not the policy is uniform throughout all penal institutions in the [23] State of New York? Do you know that?

A It is supposed to be but because of the fact that Attica was the scene of this uprising, the press took a greater interest in Attica, they put more pressure on the administration about Attica; and as a result, there have been a number of stories about inmates at Attica, who were interviewed by the press, which you do not find about other institutions.

Q No, my question—

A So I don't know whether it is uniform because my experience with the New York State prison institution is that there was a great diversity in practices which Russell Oswald was trying to make uniform, but how well he succeeded under these pressures, I cannot say.

Q The answer to my question, then, sir, is that you don't know?

A That is right.

Q Now, in your direct testimony, Mr. Liman, you were asked questions with respect to the findings of the Commission to the effect that press access to Attica should be increased.

A The conclusion, that is right.

Q Now, the Commission made no specific findings, did it, with respect to whether or not private interviews between the inmates and the media should be a part of that?

A We did not state any. We did not attempt to go into any details on these matters.

[24] MR. KATZ: Thank you.

THE COURT: Anything further, Mr. Califano?

MR. CALIFANO: One question, Your Honor.

REDIRECT EXAMINATION

BY MR. CALIFANO:

Q Mr. Liman, I refer you to Page 211, at the bottom of Page 211, and Page 212 of your report which states, and I will read the paragraph:

"Prisons have traditionally been off limits to the press. The admission of newsmen and television cameras to D Yard, not only provided inmates with an unparalleled opportunity to tell the public about prison conditions, but gave them a sense of importance, dignity and power. Inmates realized that they could command national attention only as long as they kept the hostages and that once the uprising ended they would return to the status of forgotten men, subject to all these humiliations of prison life. That feeling, coupled with their fear of reprisals and mistrust of the State, made it almost impossible to persuade them to give up the limelight and return to anonymity."

Mr. Liman, how does that section of the Attica Report compare, or does it, or is it consistent with the recommendation and conclusion of the Commission as far as press access is concerned?

[25] A We thought it was consistent. If you read on, on Page 213, I think we deal with precisely that question. We say:

"The presence of television cameras and the press has a tendency to encourage rhetoric rather than serious concessions. The Commission believes strongly that prisons must be subject to continuous public scrutiny and that the press has a vital role to play in exposing inhuman conditions. But settlement negotiations during an uprising are not the occasion to exercise that function. To maximize chances of agreement, negotiations must be conducted privately without the presence of the press, but with appropriate briefings to the press."

That says it, I think, fully. We felt strongly that the time for the press to exercise its function was not in the middle of an uprising. On the other hand, we feel equally strongly that the press had an essential role to develop the facts of what the conditions in the prison were like, and to do it at a time and in a manner that would not simply evoke rhetoric. To my way of thinking, the only way that can be done is by private interviews where people are not under the pressure of making speeches to please their fellow-inmates or the institutional administrators.

MR. CALIFANO: Thank you, Mr. Liman.

THE COURT: Thank you, Mr. Liman, you are excused.

[26] THE WITNESS: Thank you.

THE COURT: I am going to ask you gentlemen to wait just a minute. I have a sentence I must get out of the way. Counsel have been waiting.

THE WITNESS: Am I excused, Judge?

MR. CALIFANO: Mr. Liman would like to return to New York.

THE COURT: He is excused. You don't want him, do you, Mr. Katz?

MR. KATZ: We will have nothing further of Mr. Liman, Your Honor.

THE COURT: Very well, thank you, sir.

THE WITNESS: Thank you very much, Judge.

(Witness excused.)

(Whereupon, the proceedings were temporarily suspended.)

THE COURT: You may call your next witness.

MR. WILSON: Roy Fisher.

WHEREUPON—

ROY M. FISHER

was called as a witness by the Plaintiffs, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WILSON:

Q Sir, would you state your name and place of residence for the record, please.

[27] A My name is Roy M. Fisher. I live at 203 Bingham Road, in Columbia, Missouri.

Q What position do you currently hold, Mr. Fisher?

A I am Dean of the School of Journalism at the University of Missouri.

Q How long have you held that position, sir?

A Since April 1, 1971.

Q Prior to assuming your present position, did you have any training or experience in journalism?

A Yes.

Q Would you please describe your training and experience in journalism?

A In the area of training, I graduated from Kansas State University with a Bachelor's in journalism degree. I was a Neiman Fellow at Harvard for a year, where I studied state and government reporting.

In professional experience, I have been a reporter for two small newspapers in Kansas and Nebraska; and in 1945, I joined the staff of the Chicago Daily News, where I served as a police reporter, a general assignment reporter, political reporter, assistant city editor, city editor, feature editor, assistant managing editor and editor.

Q Would you describe your duties while you were editor of the Chicago Daily News?

A I was the chief news executive on the paper and I had [28] responsibility for the local and national and foreign news reports, as well as the editorial page and the editorial comments and editorial writers.

Q How long did you hold the position as editor of the Chicago Daily News?

A Five years.

Q What period in time?

A 1965 to 1971.

Q That was immediately preceding assuming the post of Dean of the School of Journalism at the University of Missouri?

A Yes.

Q Dean Fisher, is there any established system for ranking schools of journalism in terms of quality that you are aware of?

A Not particularly except for the accreditation, which the National Council for Education in Journalism accredits about 59 schools of journalism.

Q While you were serving as editor of the Chicago Daily News, did you have any responsibility for the hiring and training of personnel?

A Oh, yes. I had the final word on all employees in the editorial department.

Q In the course of performing that duty, did you find it necessary to develop a basis for evaluating the training and experience of men who applied for jobs?

[29] **A** In the course of the years, I began to form opinions as to the kinds of training that I could expect graduates from various schools to have, yes.

Q In the course of forming those opinions, were you able to form any judgment concerning what might be called the top-ranked schools of journalism in this country?

A Yes, I think so.

Q What conclusions did you draw?

A I felt that the most prestigious, most effective schools for training professional reporters would be the University of Missouri, Northwestern, Columbia, Minnesota, perhaps Wisconsin.

Q Now, did this conclusion have any bearing on your decision to leave the Chicago Daily News and assume—

THE COURT: You can't get him to say that he doesn't run a good school of journalism. You just can't make him do that. Let's get on with it.

BY MR. WILSON:

Q Dean Fisher, is there anything distinctive about the University of Missouri School of Journalism?

A Well, it is the oldest school in the world, and it is the largest from the standpoint of training working press men. There are about 1009 students this semester.

It has the greatest facilities, physical facilities. We operate a commercial television station, an NBC affiliate, [30] which is used as a laboratory for our students. We operate a daily newspaper that circulates through the mid-part of Missouri, a very good commercial newspaper. We operate a radio station, educational radio station, as laboratory facilities for training prospective journalists.

From the standpoint of the variety of sequences, editorial, broadcasting, magazine publishing, advertising, and so forth, we are the most diversified of any of the schools.

From size, we have the largest faculty and perhaps one of the most prestigious faculties and the most cosmopolitan student body. We have students this semester from 49 states and 12 foreign countries. About half of our students are drawn from outside the State of Missouri, and the other half come from the State.

Q You mentioned a commercial television station and radio station and a daily newspaper. Are these produced by the students?

A Yes, the students do the primary production work on the stations.

Q Is the Missouri Journalism School undergraduate?

A It is both undergraduate and graduate. 750 students are undergraduate students and 250 graduate students.

Q What are the students of the University of Missouri School of Journalism taught concerning the techniques of newsgathering?

[31] A Well, we are sort of a hard-nosed school, I guess, if you would classify philosophies of schools. We emphasize the professional skills required for performing assignments in news departments. In the gathering of

news, we emphasize the objective criteria of writing, reporting. We teach our students that the highest standard of their service is to recreate a reality for the reader, to be the conduit of information, not the advocate or the political persuader.

Q What if anything are the students at your school taught concerning interviewing as a source or a technique of news-gathering?

A Well, there are various sources of gathering news. There are ways of gathering news. We teach them that the closer you get to the original source of the news, the more likely you are able to be to create accurate reality for your reader.

The best source of information is your own experience, a face-to-face observation of an event by a trained reporter. If that is not possible, then a reporter should get as close to that situation as possible. One step away would be to interview someone else who was a participant or observer of the event. Eventually, you get to the point where you use as news sources written accounts of an event or a publicity release. But always one should strive to get as close to the prime source as possible.

Q Now, as part of this instruction, are students instructed in how to conduct interviews, and will you go through [32] that process?

A Yes, he is taught first he should approach a subject not as an adversary but as someone who seeks to understand what the subject is trying to tell him, and encourages the subject to speak frankly and candidly. He doesn't try to construct the interview but to follow threads that may develop in the course of the interview. He should be receptive, sensitive, almost a sponge, an information sponge, because his ultimate judgment as a journalist is going to be related to the credibility of what he is hearing in the interview. He is going to have to make a subjective judgment as to whether the subject of the interview is believable. Not a clear subjective judgment but it will influence the importance of the story. Newsworthiness of the story. Whether the source is evaluated to be a responsible and correct source.

Q Is the opportunity to evaluate the source an important factor in encouraging students to interview?

A Very much so. It may make the difference whether a story is played on page 1 or page 36 or isn't played at all.

Q Dean Fisher, was it your experience as a working newsman that the accurate and effective reporting of news had a critical dependence upon the opportunity for face-to-face interview?

A Very much so.

MR. KATZ: I object to the question as leading.

[33] **THE COURT:** Sustained.

BY MR. WILSON:

Q Dean Fisher, during your experience as a working newsman, did you have any occasion to engage in face-to-face interviews?

A Yes.

Q Can you relate from your experience any examples where that had a bearing upon your development of a news story.

A Well, they are so numerous that one could—every day a reporter interviews people to get information. I suppose one could cite a hundred or a thousand different examples, if he wanted to put his mind to it. There is one particular case that might be interesting in this connection.

It involved a person who had been convicted of a rape and murder of a ten-year-old girl in Illinois, and who had been sentenced to death. He spent ten years in death row, waiting for execution, during which time there were various appeals, and so forth. The processes of law were being carried out.

Eventually the United States Supreme Court held that he had been convicted on perjured evidence and remanded to the District Court; and he was ordered released.

Now, in the process of reporting this incident, this case, we had, of course, from time to time carried articles about the processes of appeal, and so forth. When he came out of the State Penitentiary at Joliet, we thought this would [34] make an interesting and relevant story

for our readers and perhaps would give some insight into the judicial process and, in this case, a miscarriage of justice, as we saw it.

So I assigned one of our reporters to meet this man as he came out of the prison; and he did. Our reporter took him to a Chicago hotel and discussed with him the possibility of our helping him do a story or doing his story of ten years on death row, and the case, itself. He agreed to do so. So our reporter spent several days interviewing this man. In the course of the interview, the reporter became very skeptical about the man's reliability and the story of his own life, as he was telling it, and his involvement or non-involvement in the crime.

I got a call from the reporter one afternoon and he said: Fisher, I wish you would come over and take over the interviewing of this man for a while because I don't think his word is worth the paper we would print it on. So I went over to the hotel and spent two hours on one occasion and three hours on another occasion, perhaps another visit, with the man, and came to the same conclusion that our reporter had. As a matter of fact, I have to this day the greatest reservations about whether that man was innocent of the crime.

So we dropped the interviewing, dropped the story, printed nothing further about him, and canceled the whole project.

[35] Q So it is—

A A decision that came only after we had had a chance to visit, talk intimately with the man for some period of time.

Q And prior to having that opportunity, you thought you had a good story?

A Oh, yes, he was a very sympathetic personality, you know. It looked like this was a case where society had gravely wronged a man.

Q Dean Fisher, you have said that there are too many examples in your own experience to site them in terms of the role played by face-to-face interviews in developing news, is that correct, sir?

A Yes.

Q Are you familiar with any studies that have been done that would tend to confirm your experience in that respect?

A Yes. I read a study recently—

Q Your answer is, yes?

A —about that.

Q Your answer is yes?

A Yes.

MR. WILSON: I ask that this document be marked as Plaintiff's Exhibit No. 10, please.

THE DEPUTY CLERK: Plaintiffs' Exhibit No. 10 marked for identification.

[36] (Whereupon, the study by Gary C. Lawrence and David L. Grey appear in the Journalism Quarterly was marked Plaintiffs' Exhibit No. 10, for identification.)

THE COURT: Dean Fisher, you are talking theory, not practice, isn't that right? You are not talking practice.

If you pick up a daily paper every day, you find reporters writing the most gossipy type of semi-editorialized news articles, without any disclosure of source or reliability or anything else.

You are talking theory, as these young men go out into the business, with their faces washed, and not what happens when they deal with an editor.

THE WITNESS: No, I am talking fact.

THE COURT: Look at our daily papers here in town. Responsible papers, as they are considered, they are full of the most gossipy kind of news: A high official said this. Or: An unknown source said that. Obviously, people who have an ax to grind or they wouldn't talk to the press.

THE WITNESS: These are cases when a reporter is not dealing with the prime source of his news or is dealing through—

THE COURT: They never say the man doesn't know what he is talking about. They say he is a prime source.

THE WITNESS: Well, the reporter is going to, if he [37] is a competent reporter, form some evaluation, some

judgment based upon his own evaluation of the reliability of a news source. He will present the information to the best of his ability based upon his evaluation of the source. It is always an inferior source if one cannot get directly to the prime holder of information. But often, that is impossible. The reporter may be prevented because the prime source does not want to talk, or as a deliberate policy of the administration, it does not want to be identified with a piece of information for some reason, but may well desire to have that piece of information in public circulation.

So there are all sorts of screens and obstacles placed between the reporter and the reality. Whenever—

THE COURT: That is what is involved here, isn't it?

THE WITNESS: Yes.

THE COURT: A regulation that places obstacles in the way of accurate news reporting. That is nothing unusual.

THE WITNESS: Oh, no.

THE COURT: They exist everywhere, don't they?

THE WITNESS: A reporter deals with the best information available to him. We have one of the serious problems of the credibility of the press in this country, which is the fact that the reporter finds it necessary so often to deal with remote sources rather than prime sources.

THE COURT: I don't see what the relevance of this [38] testimony is to the problem I have before me.

MR. WILSON: Your Honor, it is related—

THE COURT: I understand the testimony has relevance in that it says that the most accurate type of news-gathering is by personal interview with people who have direct knowledge of the specific problem under inquiry. But beyond that, which I guess is obvious, what has it got to do with the case?

MR. WILSON: It is directed to the first question specified by the Court of Appeals on remand, Your Honor.

THE COURT: Well but aren't you overlooking the word, "critical"?

MR. WILSON: No, Your Honor.

THE COURT: Aren't you overlooking the word "critical" in the first question? Since at least I have the impression, as a newspaper reader, that most information given by the press is obtained through indirect, oblique and often unqualified sources.

So the word that I thought was important in the Court of Appeals question was "critical."

MR. WILSON: Yes, Your Honor.

THE COURT: And the gentleman just acknowledged usually you don't talk to the prime source. The prime source doesn't want to talk to you.

MR. WILSON: The thrust of his testimony is that the press wishes to get to the prime source and they are obstructed. [39] In terms of proper journalistic training—

THE COURT: I will take judicial notice of that. The press isn't allowed to attend board meetings of The Washington Post. It isn't allowed to attend Cabinet meetings. There are all kinds of places where the press isn't allowed to come. I will take judicial notice of that. There are all kinds of bars to press access in every part of our society, aren't there?

MR. WILSON: Well, there are—

THE COURT: I suppose a newspaperman hears, No comment, a substantial number of times every day.

MR. WILSON: The issue in this case is whether a Government agency can impose an absolute bar.

THE COURT: But he is not talking about Government agencies. His testimony isn't related to the issue I am interested in, and that is the question of the problem of inquiring into situations where the conduct of public officials in public institutions is at issue, and the question of the reliability or unreliability of official pronouncements given by those whose conduct is under investigation.

That is not what you are talking about. You are talking about some kind of a theory, which I don't think is followed in practice in the news business, because of all these obstacles. I don't really think it is moving me along, sir.

MR. WILSON: I will move on, Your Honor.

[40] BY MR. WILSON:

Q Dean Fisher, have you had any experience with reporting about prisons, prison conditions?

A Yes.

Q Would you describe your experience, please?

A On several occasions I visited the State Penitentiary in Joliet, and with the warden went through the prison; and I wrote stories relating to their rehabilitation programs, their various facilities for rehabilitative training, and other conditions in the prison.

Q Was the purpose of your visit to develop stories about rehabilitation programs?

A Yes, that is correct.

Q Now, what procedure was followed when you visited there, the State Penitentiary?

A Well, I was escorted by the warden to various departments of the prison, and we watched the printing press, and the bake shop, and the various activities there, the school; and I visited with the persons in charge of the operation; and talked with some of the prisoners about what they were doing and their program.

Q You say you talked to prisoners. Did you talk to them, interview them privately?

A No, as we would go into a room, if there were some prisoners there, I would simply begin a conversation with them.

[41] MR. KATZ: May we establish when this was he visited Joliet?

THE COURT: Yes.

BY MR. WILSON:

Q When was this, Dean Fisher?

A I can't give you the exact time. It was when Warden Ragan was warden at Stateville; and this must have been 15, 20 years ago.

Q Did you have the opportunity for private, confidential interviews with inmates during these tours?

A Not those tours, no.

Q Did you leave the prison after your visit with a feeling that you had obtained a full understanding of the conditions inside?

A Well, the visit was satisfactory from the standpoint of what we went out to do, which was to do a story about new rehabilitation programs that were under way. I did not go beyond that, the scope of that story, in our discussions with prisoners. I had no occasion to.

Q I see.

Dean Fisher, I will read two sentences from the brief that the Government has filed in the Court of Appeals in this case, and then ask you some questions based on those two sentences.

THE COURT: What page of the brief are you talking [42] about?

MR. WILSON: Your Honor, it is the bottom of Page 25 and up on the top of Page 26.

I quote:

"The lack of any abridgment of the freedom of the press is understood by the fact that the Bureau has carefully provided for a comprehensive system of reasonable alternative under which the press has full opportunity to inspect prisons and to learn about and report on prison conditions and prisoners' grievances. Thus, under the Bureau's policy statement, press representatives may visit, inspect and photograph Federal prisons; inmates are permitted to directly inform press representatives of prison conditions and prisoners' grievances through sealed, uninspected mail, written and delivered promptly to any press representative; press representatives are permitted to initiate correspondence with particular inmates or to follow up on mail received from inmates by writing to particular inmates in letters which are inspected only for contraband or matters inciting illegal action; and prison officials are required to give all possible assistance to press representatives in providing background and a specific report on inmate complaints."

Dean Fisher, if you wished to do a story on prison conditions or prisoners' grievances while you were a working [43] newsman, would you feel that you could develop a fair and accurate story if you were limited to the

sources of information itemized by the Government in that passage of the brief?

A No.

Q Why is that, Dean Fisher?

A Well, if one is to do a story on prisoners' grievances, he has to be in a position to evaluate the credibility of the prisoners' statements. If he is restricted to corresponding by mail, it would be practically impossible to pursue a line of questioning through the mail with a prisoner that could effectively give the reporter a basis for making such an evaluation.

When you cannot make an evaluation of the reliability of your correspondence, you either have to take it at face value or you turn it down. What would be likely to occur in this situation, if I received a letter from a prisoner complaining about such-and-such, I would take this letter and then I would go to a prison official, and I would say: Prisoner A says this. What do you have to say about it?

In the absence of any basis for making my own observation and judgment of the grievance, I would present this story somewhat as a debate between the prisoner and the warden; give the warden equal time, so to speak, and the prisoner equal time. That would really be the only way a reporter could do it.

However, if I could go in and talk to and [44] cross-examine the prisoner and establish a basis for my own judgment, then I could say with conviction to my editor that: I have talked this out with the prisoner and I either believe him or I don't believe him or I partly believe him. And this would form the basis then of the treatment of that story in the newspaper.

Q Is there any reason why you would not simply want to rely upon the information provided you by prison authorities?

A Well, if they are the accused person, it is like going to a defendant and saying: Well, are you right or wrong? There are times when prison officials are wrong. Properly, the press should be skeptical about performances of any public official, if he has a complaint.

THE COURT: Don't you fulfill the role of the press if you say: This is what the warden says and this is what the prisoner says.

THE WITNESS: If that is all that is available to you, yes.

THE COURT: Isn't that the role of the press, to report points of view in a controversy?

THE WITNESS: No, the role—the press has got to make some subjective judgments as to the importance of the accusation, the probable accuracy or inaccuracy of the accusation.

THE COURT: Because if you believe the prisoner, you would be more apt to go on some kind of a crusade about the [45] problem, is that what you are saying to me?

THE WITNESS: No.

THE COURT: I don't mean crusade in the wrong sense but I mean, if you believe there are abuses and you are satisfied there are abuses, then you would give them more attention than if the matter sort of sat in equipoise, or would you?

THE WITNESS: I don't think I could answer that. I am not sure—

THE COURT: That has to do with the whole role of the press, Mr. Fisher. Why can't you answer that?

Is the role of the press to report or is the role of the press to reform or is it both?

THE WITNESS: Both roles, of course, are involved in the responsibility of the press. But our primary role is to report. But we have a responsibility in evaluating the information that comes over our desks and ascertaining whether it is sufficiently credible to pass on to our readers or is it so blatantly incorrect as to file it in the wastebasket. Most information we get, we file in the wastebasket.

When we make a judgment that it is newsworthy, there is some credibility, then we put it in the newspaper. It is when we fail to go behind a piece of information and make that evaluation that the press is open to the charge of being unbelievable. Unfortunately, sometimes you can't go behind it.

THE COURT: When I get a letter from a prisoner [46] telling me that he has been hurt or abused or assaulted, and I get a large number of those letters as every Judge of this Court does, our technique is to have a lawyer go and take a look at the matter by talking to the prisoner.

THE WITNESS: Our technique would be to assign a reporter to go and talk to the prisoner.

BY MR. WILSON:

Q Dean Fisher, are you aware of any policies that exist on newspapers with which you were associated relating to the use of information supplied in writing?

A Yes. The policy in our own newspaper was that we never accepted written communications at their face value, unless we could ascertain the reliability of the source and of the authenticity of this communication.

For example, when we receive an announcement of a wedding, a scheduled wedding, at the society desk, this announcement is never printed until the society reporter calls the person involved and verifies it.

Obituaries, the most elementary kind of news announcements that come into the paper, if there is any possibility of embarrassment—oh, I suppose, if we got a letter to the editor about some frivolous thing, about the weather, or something like that, we might just print it without checking it out.

THE COURT: Isn't that because of the libel laws?

You don't have any problem. You can libel a prison [47] official all you want under *Sullivan v. New York Times*. There isn't any restraint on your libeling him.

THE WITNESS: It is part of any reporter's prudent behavior.

THE COURT: Apart from the libel question?

THE WITNESS: Apart from libel. It is axiomatic in a news room that you check out the source of your information. Even a financial statement released by a recognized public relations firm, arriving at the business desk of the *Daily News*, the first thing the reporter does is to call the originator of that release and verify it.

We are struggling in the press constantly to maintain credibility, to establish and maintain credibility. These are simply prudent things, procedures that we take routinely, in an effort to do that.

BY MR. WILSON:

Q Dean Fisher, I asked you earlier if you were aware of any studies that had been done that would confirm your experience on the importance of face-to-face interviews.

I show you now Plaintiffs' Exhibit No. 10, for identification, and ask you if you can identify it?

A Yes, I can.

Q What is it, sir?

A It is an article that appeared in the Journalism Quarterly. This is a scholarly journal, published by the [48] Association for Education in Journalism. It appeared in Volume 46, Number 4, Winter 1969. It begins on Page 753.

The article is entitled:

"Subjective Inaccuracies In Local News Reporting." It is written by Gary C. Lawrence and David L. Grey.

Q Will you describe just briefly what that article is about?

THE COURT: I can read the article.

BY MR. WILSON:

Q Are you familiar—

THE COURT: Do you agree with what it says, Mr. Fisher?

THE WITNESS: Yes.

BY MR. WILSON:

Q Are you familiar with either of the authors of the article?

A I do not know Gary Lawrence. David L. Grey, I know by reputation. He is an Assistant Professor at Stanford University in the Department of Communications there. He has a reputation as a scholar and as a teacher of journalism.

MR. WILSON: Your Honor, I offer Plaintiffs' Exhibit No. 10.

MR. KATZ: Your Honor, we object to the admission of this exhibit.

THE COURT: On what ground?

[49] MR. KATZ: This gentleman is not the author of it.

THE COURT: He is an expert and he says that he agrees with what is in it. So it is in lieu of his giving that opinion. You may cross-examine him on it. He has announced it as his view. He agrees with it.

Overruled.

[Whereupon, Plaintiffs' Exhibit No. 10 was received in evidence.]

MR. WILSON: I have no further questions.

CROSS-EXAMINATION

BY MR. KATZ:

Q Mr. Fisher, you have been at the University of Missouri for how long?

A Since April 1, 1971, about 18 months.

Q Immediately prior to that, you were with the Chicago—

A Daily News.

Q —Daily News?

A Yes, sir.

Q Now, other than the one visit that you described to the Joliet Penitentiary 15 or 20 years ago, you have had no personal experience with prisons, is that correct?

A Oh, yes. As a police reporter I was often in County Jail, Cook County Jail, and the police lock-ups, both at Central Headquarters and the precincts out in the city.

Q How long ago was that?

[50] A Oh, this was when I was a reporter, so it was 20 years ago.

Q But you have not visited any penitentiary within the last 20 years, or so, is that correct?

A Fifteen years, yes, that is right.

Q So you have no personal knowledge of current problems in prisons and no knowledge of the problems faced by those charged with running them?

A I would not consider myself a prime source of that kind of information.

Q You have no personal knowledge?

A That is right.

Q Do you have an opinion, sir, on the matter of whether or not press attention which is given to protesters, militants, and so forth, can have the effect of encouraging these persons to certain activities?

A I think at times it undoubtedly does.

Q Do you think of any examples of that in recent times that you know of?

A Well, when a protester is seeking public attention, as, for example, the demonstrators at the 1968 Democratic Convention, which occurred in Chicago while I was editor of the newspaper there, during which I was often on the street and involved in. This was a means, a political means on the part of the demonstrators to call their particular grievance [51] to public attention.

Q Was it not a fact that many of these persons engaged in certain activities only when they saw television cameras were being focused on them during that period?

A I don't know that they engaged in them only at that time. I think that sometimes they made a point to engage in it when the television cameras were present. But there was a large demonstration going on without any television cameras.

In the '68 Convention, the television cameras were restricted because of technological reasons, technical reasons, to either the amphitheater or to the Stevens Hotel or the Conrad-Hilton Hotel area. Of course, a great many of the largest demonstrations occurred in Lincoln Park; and I don't know of any television coverage of that.

THE COURT: I am really not trying questions about Mayor Daley or what happened in Chicago, Mr. Katz.

MR. KATZ: I will move on.

THE COURT: I am trying to keep this hearing related to prison problems, if I can, and not decide what

might have happened at the Democratic Convention in '68.

I don't see the pertinent of that. I don't see the pertinence of your question.

MR. KATZ: I will move on, Your Honor.

BY MR. KATZ:

Q Did you speak earlier in your direct testimony, sir, [52] about an integrity gap in the media?

A I didn't use that term.

THE COURT: He was talking about credibility.

THE WITNESS: A problem of credibility.

BY MR. KATZ:

Q A credibility gap. Do you believe this exists to a significant extent in this country today?

A It always has and does today.

Q Do you believe at least one contributing factor to such a situation might be that certain members of the press might be inclined not always to be completely objective about a particular matter and to endeavor to ascertain both sides on a particular matter?

A To a degree that the journalist falls short of the highest professional expectations of his craft, he contributes to lack of credibility.

Q Now, with respect to the particular policy of the Bureau of Prisons, about which Mr. Wilson asked you some questions earlier, do you feel that the opportunity that is given in that policy statement for a newsman to visit an institution and to check out allegations made—the only limitation, apparently, being on a direct interview with the inmate—at least goes in large measure towards satisfying the requirements of the press?

A It goes part way. It is better than no visit at all.

[53] Q But it would, would it not, at least give the newsmen the opportunity to come in and observe and see and check out allegations that are made?

A Depending upon the nature of the allegations, he could check them or not. If it was an allegation concerning physical conditions, unsanitary conditions, and so forth, he could check those out.

Q Certainly these could be checked out, could they not?

A But if it is something that he would need to talk with the prisoner about, then he would not be able to check them out.

Q Well, you merely have the prisoner's side of the story in the letter which he presumably has written to the press. I believe you stated that the principal objective in dealing with these matters is to come in and determine whether or not the allegations are correct or incorrect; and you have this opportunity based on your opportunity to observe, as you have described, in most cases. So the purpose of the interview which you would expect would be what?

A To establish a basis of evaluating the kind of charges that have been made, if those charges relate to things which cannot be observed physically, when you visit the prison.

Now, if they can be observed physically, you can ascertain them with your own eyes. But most frequently, the grievances are not of that nature today in the prisons; at [54] least the letters that we received in the newspapers are not of the physical aspects of the prison.

Q I am sorry, sir, what was that last?

THE COURT: He says the letters they received don't usually relate to physical aspects of the prison. They relate to the treatment of the prisoners.

THE WITNESS: The personal grievances that the prisoner may have.

BY MR. KATZ:

Q Such as what, sir? Such as what? What are the most common types of grievances?

A The treatment that he has received from guards or other prisoners, a question of all sorts of personal, interpersonal conflicts that go on in the prison. Those, in my experience, as a newspaperman, on the receiving end from time to time of complaints of prisoners, have been the kind of things that would come to our attention most often.

MR. KATZ: Indulge me for a moment, Your Honor.

MR. WILSON: I have no further questions.

THE COURT: He isn't finished, I don't believe, Mr. Wilson.

MR. KATZ: I have no further questions.

THE COURT: You are excused, thank you.

(Witness excused.)

THE COURT: We will take a five-minute recess at this [55] time, gentlemen.

(Whereupon, a short recess was taken.)

MR. CALIFANO: I would like to call Mr. Boone, please.

WHEREUPON—

JOHN O. BOONE

was called as a witness by the Plaintiffs, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CALIFANO:

Q Mr. Boone, would you please state your name, address and present occupation for the record?

A My name is John O. Boone; my address is 100 Cambridge Street, Boston, Massachusetts; and I am Commissioner of the State Department of Corrections, State of Massachusetts.

Q Commissioner Boone, is that the highest post in the corrections system in the State Massachusetts?

A Yes, it is.

Q Commissioner, would you state your education and professional experience, please, prior to assuming your present post?

A I got a Bachelor degree from Moorehouse College in Atlanta, Georgia, in 1950, and a Master's degree in social work from Atlanta University in 1951.

You mentioned, you said, experience?

Q Yes, please, your experience prior to—

[56] THE COURT: I think all he wants is your experience in corrections.

THE WITNESS: Oh, yes.

My experience in corrections includes six months at the New York State Training School for Boys; beginning in 1951, as a correctional officer at the United States Penitentiary, Atlanta, Georgia, until 1952. I became parole officer and supervisor of graduate students of social work and started doing group therapy until 1958, when I became case work supervisor, Atlanta Federal Prison.

In 1964, I became Chief of Classification and Parole Department at Atlanta Federal Prison, and was transferred to the United States Penitentiary at Terre Haute, Indiana, in 1965, as Chief of Classification and Parole, and remained there for approximately two years; and took leave to do a project on crime and corrections for the Southern Regional Council, under the auspices of the Ford Foundation, for three years, until 1969.

In 1970, I became Superintendent of the Lorton Correctional Complex and remained there for two years, until I was appointed this year, in January, as Commissioner for Massachusetts State Department of Corrections.

BY MR. CALIFANO:

Q Is that the Lorton Correctional Complex here in the District of Columbia?

[57] A Yes, it is.

Q Commissioner Boone, would you describe the correctional institutions of Massachusetts which you supervise, the number of institutions, the daily average population, racial makeup, and so forth?

A We have five major institutions, three prison camps, two community re-integration centers and contracts with three private concerns for halfway houses, for direct supervision of a total average daily population of about 3,000; and we have the responsibility, by reason of legislation effective October 16 this year, for establishing minimum standards for 16 houses of corrections, and pursuant enforcement of these standards involving approximately 2000 average daily population.

Q Do you have different levels of security in your institutions, in the prisons that are identified as such?

A We have all kinds of men in prison requiring minimum and maximum security. I inherited a system that didn't have a clearly-defined classification program. But we know that there are men that require minimum security and others who require close security.

Q For what kinds of offenses are men committed to your institutions?

THE COURT: All state felonies.

THE WITNESS: Yes, all state felonies, burglary, armed robbery, and embezzlement types of things. All imaginable [58] state felonies.

Q Give us a sense of the racial mix of your prison population?

A The population of the state prison system is about 30 per cent black, and 7 per cent Spanish-speaking.

Q Do you visit the institutions?

A As often as possible.

Q Do you consult with the wardens and administrators of those institutions and how often?

A Weekly at least.

Q How would you compare the Massachusetts system, Commissioner Boone, with the Federal prison system?

A I would certainly feel that we have the same problems in the state prison system that prevail in the Federal prison system. I feel that the Federal prison system is better able at this point to cope with their problems because they are better developed than the state system.

Q What is your policy with respect to interviews between members of the press and inmates of your correctional institutions?

A I have an open policy, reasonably open. We would mandate that access to the press be facilitated, facilitated in terms of problems that might prevail in our institutions at the time of the request.

THE COURT: What does that mean? If a newspaperman [59-75] wants to interview a prisoner and the prisoner wants to talk to him, can he or can he not do that?

THE WITNESS: He can do it. He would make the request and the superintendent or a departmental staff person, usually the Public Information Officer, would arrange it.

THE COURT: Set up the time and conditions?

THE WITNESS: Set up the time when he can come in, and in some cases we would want to know under what conditions this would be conducted.

[76] BY MR. CALIFANO:

Q What is your policy concerning television reporters?

A The same policy. We have an open media policy for the institutions.

Q What is your policy concerning the use of telephones by inmates?

A At all of the facilities in Massachusetts we have free use of telephones. When I came to Lorton there was regular use of telephones on a scheduled basis.

Q Can a prisoner call a reporter over those telephones?

A Certainly. He can call anybody he wants, to call.

Q Does anyone listen in on those phones, or are they private conversations?

A No. They are private conversations.

Q Does your policy in Massachusetts place any restraints on the subject matters of the interviews between the reporter and the inmates?

A No, not at all. We would consider that an exercise in futility to try to do that.

Q During those interviews are members of your staff present, or are they interviews between the reporter and the inmate alone?

A They are interviews between the reporter and the inmates, and we provide as much privacy as possible.

Of course, sometimes the interview may need to be [77] held in a visiting area where other prisoners could be around. Our resources are limited at some of the institutions. But we would certainly have no objections to a private interview, and we had private interviews both at Lorton and in the state, we have them in the State of Massachusetts.

THE COURT: Commissioner Boone, recently the Massachusetts prisons have been very much in the public eye.

THE WITNESS: Yes, sir.

THE COURT: There have been a lot of complaints, a lot of discussion about a substantial number of escapes that took place in a number of institutions. The governor has been sounding off about it and supporting you. Others have been raising questions in the press.

I have read stories as to whether or not you have become too permissive and, therefore, someone else should be the commissioner.

I don't want to get into all of that, but this has been a time of some tension in the prison systems in Boston and Massachusetts; has it not?

THE WITNESS: Definitely.

THE COURT: Yes. Now, during that period has the press been permitted to interview individual prisoners?

THE WITNESS: Absolutely. Since you raise that question—

THE COURT: The reason I know about it, I go in the [78] summer to Maine and I read the Boston papers.

THE WITNESS: Right.

THE COURT: And listen to the Boston radio stations. That is the only reason I know anything about it. But it was quite an exciting summer for you.

THE WITNESS: You would think that Massachusetts has the only correctional system in the country. But we had some of the same problems when I was at Lorton. We were quite visible.

THE COURT: Yes.

THE WITNESS: But I think the correctional administrators are too defensive in relationship to the media.

I had that at Lorton, and they were beating us to death because on one side we had a tendency to want to control the kind of information that would come out.

So we considered the practicality and the ideology on at least three levels—that is, on the individual level, on the group level, and on the prison community level—and we decided we must have free access.

While we appreciate the fact that with an open policy you would have isolated instances of problems, as well as you do with a closed policy, I think you have more problems with a closed policy than you do with an open policy. And I have many, many examples of how an open media policy has [79] facilitated our image in the community and gotten for us some solidarity behind the plight of coping with this problem.

When I was in Atlanta, Georgia, years ago, working at the Atlanta Federal Prison, a reporter somehow got into a Georgia Prison, and he took a picture where a young man had written on the wall "They is no God."

Now, certainly prison officials would perhaps prefer that picture didn't get out. But it was not an indictment necessarily against the prison officials alone. The man can't spell. It had an indictment on social institutions, and he wrote it in the hole. He just had given up, and Mr. Pennington wrote a series of exposes. But it turned out to be exposes on the correctional system, not on the people that give the money.

If you give a correctional administrator, as someone has said before, \$200, he is liable to buy some chains.

So with appropriate media relations, we can put this problem in proper perspective.

At Walpole, two months after I got there, there was a riot. The officers locked the men up and, unfortunately, hollered "race riot," and later the authorities broke in and brought the men out. There was a fire, and we had to make a decision one way or the other. We decided to do it. They said they wanted a press conference. We had 38 inmates [80] representing the groups there, black and white together, and the people all over the state saw them saying "This was not a race riot." There was a fight that was permitted to go on for 30 minutes and it escalated into this kind of disorder.

So that is one example of how access for the media helped up properly interpret a situation.

THE COURT: Well now, what about individual interviews, how have they or how have they not played a part in assisting you in the administration in Massachusetts?

THE WITNESS: I think that if you can get some good human interest interviews, they would give the public another side of this issue. But by and large, they do not help or hinder.

I have had one recently—we had some experience before with one that I would rather have not, you know, not gone along with, but I felt that I was out of place doing that.

We had a man named Di Silvo, known as the Boston Strangler, that had given an interview through a Bridge-water reporter, and it was misused for commercial purposes. It came out as "Titticut Follies." The man commercialized it, and it is banned from the state now.

Now, recently the same individual who made that movie came to me and wanted to interview what he said was his client, Di Silvo.

Of course, he was unethical, and there are [81] dishonest reporters.

Then once upon a time a lawyer entered the picture, and this is between the man and the client, and we wanted specifications as to what pictures he is going to take and where.

Now, we feel that from a political point of view and another point of view, we need to know something about what is going on in this. But, essentially, this is between that man and his particular client, and we would not feel urged to participate in that at all, other than to cover ourselves.

THE COURT: But did you let the interview with the press take place, the second interview?

THE WITNESS: Yes, it is going to take place, certainly. We just don't feel that we have any reason at all to interfere with that. We want to be sure that the position is that he will not misuse this and exploit our problems for pecuniary gain, and what have you.

BY MR. CALIFANO:

Q Commissioner Boone, during the period your policy has been in effect, do you have some estimate of the number of requests by members of the press for interviews with inmates, rough estimate?

A Very few, very, very few. I would say maybe an average of one a week. No more than that, certainly.
[82] Q Have any of these requests been denied?

A We have not to my knowledge denied any, and I would have to deny it, because they can, of course, ask the superintendant for interviews, and if the superintendant is inclined to deny it, he would refer them to the department for further exploration. But we have not denied any.

Q What was the policy when you arrived to assume charge of the Massachusetts Correctional System with respect to press interviews?

A The policy was a policy that facilitated interviews under certain circumstances. It required a two weeks letter and a certain amount of interchange concerning the purpose of the interview. So the media had to go over a certain number of hurdles in order to get an interview.

Q And you removed those hurdles?

A Yes.

Q Why did you change the policy, Commissioner Boone?

A I changed the policy because, essentially, it was, in my opinion, self-defeating. As I said before, you have isolated instances, possibly, problems with this, with both an open and a closed policy.

With a closed policy, both the forces that wanted to hold back change—and this involved people out in the community—or self-styled advocates for inmates who enjoyed the fact that we were not being very democratic in prison, and [83] they were whipping us to death on it. And, also, the guards were controlling the kind of information that was getting to the press.

We felt that we should put it all on the top of the table, really come clean, and let us be accountable to the people who are paying for this agency. It is just like a school agency, a welfare agency, or any other kind of agency. There is nothing mystical about it.

In fact, it is mystical because we have made it mystical. We have been on the defensive through the years. That is my opinion.

Q Do you think that press access has any impact on the tensions of the inmates, and, if so, what?

A Not at all. I have seen where it has relieved tensions.

The Walpole incident, if those men could not have said in so many words "It is a lie that this was a race riot"—it was a riot, yes, destruction, yes. But it wasn't a race riot.

That was very important to them. We had investigation after investigation in the State House where officers were presented and the press was there, and all, and inmates said "We want a press conference, we want a press conference." And they were getting awfully angry, and had we not given any press conference, we probably would have had some problems.

[84] So we facilitated their press conferences at every institution. And it was peaceful, and it was responsible, and it was often supportive of a very difficult problem in prisons.

Q Do you think, Commissioner Boone, that your open media policy in press access to inmates has a positive or a negative effect on rehabilitation?

A I don't know if you could—you know, that would call for research.

THE COURT: You have got to decide, first of all, there is such a thing as rehabilitation.

THE WITNESS: I was fixing to say that. I question seriously whether there is any such thing as rehabilitation in prison, in the first place.

But I think that it could have something to do with getting resources. In other words, people don't pay for anything unless it is healthy or dangerous, and usually they pay for that by police control and military control.

But if we got some of these human interest stories out, maybe they would pay for psychological services and educational services.

I did group therapy for years. And if some of those slices of life could come out in human interest stories, I believe that the public would pay more for it when they see a retarded person ending up in prison both as a criminal and retarded, a person who needs psychiatric

treatment in prison [85] because they didn't have a decent chance—stuff like that—these kinds of stories, usually, you know, don't get out, and they could if we had this kind of support develop.

In the State of Massachusetts we are going to introduce reporters to the institutions. We are going to have them in a bus in small groups and take them and let them talk to staff members and inmates and learn more about it, because we have been hit below the belt by misconceptions.

In Lorton, Leon Dash came to us right after I got there, right after the riot that I had, and I had an awful time clearing up some of his misconceptions. I talked with him, and I had him to go around and talk to inmates and staff members.

Now, he comes out as a strong advocate for correctional reform because he learned.

Not only that, we are bringing legislators to the prisons to eat with them and to mingle with them and to learn more about what the problems are in the institutions.

This is the way to do it, as far as I am concerned.

Q Has your open press policy had any impact or any relationship to any actions by the Massachusetts Legislature?

A I would think that we have pretty good solidarity in the community, and some of the legislators are very careful in how they approach the problem of corrections. They are beginning to want to learn more about it because they know that their constituents are beginning to know more about it, [86] and this is no longer an iron curtain and they have got to be honest about it, they have got to cut out corruption and other things.

So I think the subject of corrections now is becoming a problem that everybody can know something about and speak about and form opinions about. And this is good.

Q What was the policy at Lorton when you took over Lorton, rather, when you became superintendant of Lorton?

A It was a fairly open policy. A reporter would call and request an interview, and, under certain circumstances, we would grant it, in private.

Q Did you institute that policy at Lorton, or did it exist before you got there?

A We had more of it after I got there. We started some new programs that attracted a lot of attention, and, of course, we had a riot. It was the result of a black-out. We invited the reporters in after that and let them take pictures. There were all kinds of estimates of the damage, anywhere from \$500,000 to \$1 million.

So we felt that these photographs would let the people see this.

The story got out the place was burned up. Well, some mattresses were burned.

They said a thousand men were dissatisfied, when 90 percent of the men were cooperative and only a handful [87] perpetuated that disorder.

So at that point, in fact, after this riot, we invited the support of the press. And it was not all a bed of roses, as it is not in Boston.

You have reporters who are dishonest, and you have some that have misconceptions.

But we can't do that by closing our eyes, in my opinion. We have to be aggressive and we have to try to deal with this kind of situation.

Q Do you distinguish between the kinds of reporters who are let in to interview your prisoners and others you do not?

A All kinds. I was interviewed, and a funny thing about it, they didn't interview the inmates. There was an underground newspaper, and I saw just last week when I was lecturing to a group of law students, and someone gave me a copy, and it said "Wanted, dead or alive, John Boone," because I am trying to reinforce the establishment.

So we let any kind of reporter come in. It is better to have it on top of the table than under the ground.

Of course, we have the Black Panther magazine coming in, newspaper coming in. We read it. If there is anything in there about making a bomb, we would not

have it in. We would, you know, cut it out or something.

But we have a fairly open policy, and that was [88] true at Lorton, also.

Q Commissioner Boone, have requests for press interviews or actual interviews under your policy produced administrative, serious administrative burdens on yourself and staff?

A Not at all. It is sort of routine, as with lawyers and visitors, both friends and relatives, it is just not an unusual kind—and it is not that frequent anyway. The press is looking for something too often to sell newspapers and, you know, it just is not a big burden for us.

Q Do you need any special security procedures for handling press interviews at your prisons that you don't have for other visitors?

A We would use the same as we have with others. If a law enforcement man came in, we would ask him if he has a gun, any knife or something, and he would deposit it.

They are all subject to shakedown if we want to. Within our discretion we can do it.

With responsible groups we use lots of discretion.

So I would say no more than any other responsible legitimate representative of any other field of endeavor.

Q Do you think that the press interview presents any prison security problem for you?

A Not at all, not at all.

Q Commissioner Boone, would you define or describe [89] for the Court what you would consider to be a "big wheel" or what a big wheel is in prison?

A Well, I have known them down through the ages. I met them first in Atlanta, Georgia.

I remember one of them approached a deputy warden named Graff. He was about to send him to Alcatraz, and he said: "Mr. Graff, you know good and well, I have kept more men from going to Alcatraz than you have sent there."

He was in the gambling, loan-shark business. You see, a prison being a closed community, the law of supply and demand prevails. It is a society. There are pretty tight controls and all of that.

And these men, the big wheels—I call them the wheelers and the dealers—walk a tight rope. And by and large, they want peaceful institutions because they want to keep doing their thing.

Unfortunately, we have used them down through the years. So they would be in the business of loaning money, cigarettes, if that is the medium of exchange, protecting homosexuals or not protecting them, or even selling them.

In some other developed systems in the south, something called conjugal visits may be just a prostitution situation.

Prisoners run those, and sometimes they kick back. When I was in Atlanta, I encountered a young man who was skin [90] and bones. He did not eat anything in a New Orleans jail because the prisoners sold the food to him. We felt that he might have kicked back to the jailer.

If we have steaks in an institution of 1000 men, we have to cook 2000 because they are going to steal a thousand of them and sell them.

Pills, contraband and all—the staff doesn't do it, but the staff is corrupted by it. The men that perpetrate these things are your wheelers and dealers. But they don't want any visibility, and they will fight change, too. So that is my conception of a wheeler and a dealer.

At Lorton the wheelers and dealers fought me. I had a man named Ash that I tried for six months to get him to chair a committee of civilians and prisoners to do a legal service program. And I couldn't even get a meeting of that committee or nothing. And later on I found out why. Ash was making himself about \$500 a month as a jailhouse lawyer. So he did not want any legal services situation there. Now, he was fighting the programs.

The riot at Lorton in 1970 was started by the programmers vs. those that didn't want a program, those that wanted to be tough. And they had a pow wow on top of a dormitory and decided to loot the canteen.

Now, after the canteen was looted, a few of them decided to do a little burning.

[91] So, really, your wheelers and dealers are part and parcel of the establishment.

MR. AIKENS: Excuse me, Your Honor. But could we ask that the witness be responsive to the question instead of giving a very, very lengthy statement. The original question was: What is a big wheel.

THE COURT: And I think he has defined it.

MR. AIKENS: If he did, Your Honor, I am not sure that I heard it.

THE COURT: Well then, perhaps you can review it again, Mr. Aikens, when your opportunity comes.

You may proceed, Mr. Califano.

BY MR. CALIFANO:

Q Are big wheels generally trouble makers in prisons?

THE COURT: Now, Mr. Califano, his definition of a big wheel is not the definition of Mr. Carlson and the various penitentiary officials who have appeared here. They have a different idea of what it is, and I think we are just engaging in semantics.

The problem that has been presented, Mr. Boone, by the prison officials to the Court and one that the Court has been instructed to inquire into, is whether there are not in felony penitentiaries individuals who come in having some notoriety, whether they be your Boston Strangler or they be a Bobby Baker, or they be someone else who has been a prominent [92] headline sort or criminal before he goes to the penitentiary—whether there are not individuals of that kind who by reason of the attention the press gives them and, therefore, the attention they get in the prison, as the news reports of their interviews and communications with the press come back through TV, through radio, through newspapers and through other communications—whether those individuals who are called big wheels do not get undue power and influence in the affairs of the penitentiary because of the prominence that they have generated by press interviews.

That is the issue that we are talking about in terms of a big wheel, as I understand it.

THE WITNESS: Right.

THE COURT: Not the man, the wheeler and dealer inside the prison who runs a good deal of the prison.

THE WITNESS: I can give my opinion of that by one or two examples.

It is my opinion that people are people no matter where they are, as individuals, groups or a community. And they earn leadership. You can't buy it.

THE COURT: Well, do they not attract it by press prominence? That is the question.

THE WITNESS: You could, but you will not sustain it unless you lead.

Let me, I can give two examples. In Atlanta I had [93] a student social worker who was a leader in the rights movement, and he was working with us. His name entered into the news two or three times as having discussed things with the press and others. And within a few weeks he lost his leadership by virtue of having this kind of media exposure.

When you have a crisis, you have leaders of sub-groups, presidents and chairmen, ordinarily coming together as a coalition, and ordinarily they would select a leader or sometimes a leader would just emerge because of certain kinds of strong characteristics. And even this is temporary, because after the crisis of sides, why, ordinarily they go back to their own groups.

THE COURT: The focus is not on periods of turmoil. Rather, the focus, as I understand it, and I may be in error, as I understand, it is something like this: The man starts giving interviews, and let's assume that he is an articulate, you know, articulate and perhaps inaccurate spokesman for the prison population. And by the fact that it appears through the media, he is raising holy cane all the time with the administration, one day about food, the next day about homosexuality, the next day about guard brutality, the next day about something else—does he attract to himself a support of others who say, in effect, man, you are really telling them how it is, and, therefore, gets an undue influence and position in the day to day operations of the prison [94] population.

Now, that is what was suggested to me.

THE WITNESS: Yes.

THE COURT: By the prison witnesses. And that is, the big wheel problem, as I understand it, the Court of

Appeals is concerned about. My point of view has nothing to do with this case, but it is the issue I have been instructed to deal with. And my order said that any big wheel could be barred from having any discussion with the press period.

But the Court of Appeals apparently is concerned about it, and that is the issue they want some kind of discussion from the experts about.

THE WITNESS: To be very frank with you, I have not seen individuals like that sustained.

I will admit that temporarily men are thrown into leadership roles. But I have not at all seen them sustained, and the true leader often does not emerge as the leader. He is usually behind the scene of any situation. And this would be by a group. You would not have a black muslim group which perhaps would have the largest following among blacks in any prison deferring to the leadership of another person that would set himself up as representing all of the cross-sections. It just, it would not happen at all.

So we don't see any one individual—let me tell you what happened at Walpole, and that is the place where we [95] have most of our trouble. Two things, and it might be helpful. I don't know.

We had two leaders. One of them had been sent to federal prison because he was considered a dangerous individual and he was going to blow the institution away.

We were prevailed upon by the legal community that due process was not provided. So we brought him back. He did assume leadership among his groups.

We had other leaders there. And he gained some respect among the staff that had sent him away.

During the height of organizing, which is now in process, some kind of union experiment at Walpole, he allegedly slipped down the steps and became paralyzed. And we are sure the bosses did not tell him to cut this business out.

Another leader, we had three or four, but another leader let it be known to me through his attorney that he wanted me to get him out of that place. But he was too tough to admit that he had to admit to sanction of the group.

In that group we were pursuing legislation which we got, in spite of all of the turmoil. We appealed to the leaders or the representatives of all of the groups. We said that we cannot stand violence and we are going to deal with it, and you get out there and see what you can do in your constituency.

[96] And they came back to us a couple of times and said: "We find it very difficult to do anything. We are being provoked and we can't hold the line." They did sustain, they did hold, but it was a coalition. There was no one person, no way in the world one person could have controlled that, even though there are only 500 men in that body. So you certainly wouldn't think that one man could control 1000 prisoners.

I just don't think, in my opinion, that theory has any credibility at all.

BY MR. CALIFANO:

Q Do you think that these leaders are the ones who start disturbances and riots in prisons?

A Neglect and poor procedures and policies, and poor communications, poor media relations—that starts riots in a prison. I don't want to over simplify, but that is what starts it, really.

MR. CALIFANO: I have no further questions, Your Honor.

THE COURT: Mr. Katz.

CROSS-EXAMINATION

BY MR. KATZ:

Q Mr. Boone, how many inmates do you have in your system, overall?

A 3300.

[97] Q I believe you stated you had five penitentiaries?

A Five major institutions. Not five penitentiaries, no.

Q What are the names of those five institutions?

A Walpole is called a correctional facility. It is a maximum security facility. Norfolk is a so-called medium security institution. Concord has been called a reformatory.

Q Concord?

A Concord. Framingham is an institution for women. And Bridgewater is the state hospital for the criminally insane and the sexually dangerous, which is the largest one. It has the largest one. It has the largest constituents, population. And we have some prison camps in community correctional facilities.

Q So you have only one institution you would call a penitentiary?

A That's all.

Q This is Walpole?

A Right.

Q Is the policy which you described earlier that you have respecting inmate access to media in writing?

A We have not reduced it to the form of a directive as such. We are in the process of a study by Boston University of revamping our policy.

But through staff meetings and memoranda, letters, [98] we have established this policy. I believe the policy—

Q You don't have a regulation on the subject at the present time, is that correct?

A It is a regulation. I said it and I wrote it, and anything I write is policy, unfortunately. I have to live with that decision.

Q Do you happen to have a copy of it with you?

A No, I don't.

Q In order for a newsman to have an interview with an inmate, must he make a request in advance?

A Yes.

Q What information is he required to furnish?

A Well, the name of the inmate and the nature of the interview and the time that he wants to have the interview. That's about it, in essence.

Q What do you mean by nature of the interview?

A We would like to know, in the first place, whether it is a human interest story, because we find great value in these ourselves and we might want to participate with that so that we can get as much out of it as possible.

If it is a commercial, we want to know if the inmate buys it. If he wants to sign off on this, if any pictures are made, he would have to agree that the pictures can

be used. If any money is involved, certainly, we would want to an extent be sure that he offers the inmate a contract, [95] and that he is not exploitative of the inmate.

Q Have there been other reasons besides those given by people desiring interviews under the heading "nature of interview"?

A Yes. We had an interview, a man both at Lorton and here, who wanted to follow an inmate out.

Q I am not talking about Lorton. I am talking about Massachusetts.

A I said he wanted to follow a man out on furlough, and this was done. We thought this was a human interest story. I mentioned human interest.

Q Have you ever had any person make a request for an interview where the nature of the interview is stated as to check into allegations of mismanagement of the prison, or anything of that nature?

A Yes. We have had, and, in fact, there was some validity to this in the final analysis.

Q I only asked you the question: Did you receive a request of that sort?

A Yes, definitely.

Q That is all I asked. What is your policy concerning correspondence between inmates and the news media?

A Outgoing, free and open. Incoming, we can check for contraband.

Q You do not inspect outgoing correspondence at all?

[100] A It goes out. No, not at all.

Q And the incoming correspondence is checked for contraband?

A Checked for contraband.

Q Is it read?

A Not read, no.

Q Now, do the local newspapers come into the institution?

A Yes.

Q Are they widely circulated among the inmate population?

A Well, we don't have lots of news media—

THE COURT: He is talking about the morning newspaper. Does the Boston Globe come in?

THE WITNESS: Oh, yes, they have newspapers, certainly.

THE COURT: You have TV and radio, and all that?

THE WITNESS: TV, radio, newspapers of all sorts, yes.

BY MR. KATZ:

Q Are these newspapers examined by the officials at the prison before permitted to be circulated among the inmates?

A No. They are examined in the discretion of the person who is examining, based on his assessment of the gravity of the possible introduction of contraband.

[101] Q Contraband in the newspaper?

A It's possible.

Q What type of contraband are you referring to?

THE COURT: Heroin, for example.

THE WITNESS: You could have heroin in there. A weapon. That's possible.

BY MR. KATZ:

Q I am not referring to that type of situation, Mr. Boone. What I am asking you is—

THE COURT: Do you censor what is said in the newspapers, is what he is trying to get at?

THE WITNESS: Oh, no. I said that if anybody—

THE COURT: If you get an unfavorable editorial in one of these papers, do you cut it out so the prisoners don't see it?

THE WITNESS: I have got many of them. No, not at all. We don't cut them out.

THE COURT: Isn't that what you are asking, Mr. Katz?

THE WITNESS: If the paper had how to do a bomb, we wouldn't let that one in. Although we, you know, they probably now know how to do a bomb, because we have Vietnam veterans in prisons now.

But we wouldn't let that one in. We would use that discretion.

[102] BY MR. KATZ:

Q Is there any other category of information that you would censor?

A We might, according to our regulations, we reserve the right to send stuff to the postal inspector, you know, if it is a little too dirty.

Q Obscene matter?

A Obscene stuff, yes.

Q Anything else?

A Not that I recall at this time.

Q Do you have in your system at the present time any prisoners of national reputation and notoriety? I think you mentioned Mr. Di Silvo. Anyone besides him?

A Yes. Well, we have some, probably an unusually large number of so-called Mafia members. This is a Mafia area.

Q Organized crime types?

A Yes, we have our share of those.

Q Persons with a national reputation?

A Oh, Yes. We had, for example, Stanley Bond, killed himself with a bomb and he had a national reputation.

In fact, when I walked through Walpole, it is like old home week. I see so many, many that I knew in Atlanta Federal Prison.

Q Do you have an estimate, Mr. Boone, of what [103] percentage of the prison population overall throughout your system you would consider disciplinary problems or troublemakers?

A Less than five percent.

Q Do these five percent give you a great many problems?

A A portion of the five percent give me tremendous problems.

Q What sort of problems are they, Mr. Boone?

A They are the individuals that we just really don't know what to do with these days. They used to call them psychopaths, socio-paths, or what have you. These guys can't control their impulses, they act out quickly, and things like that. We have some of that type.

Q What about rebellious or militant prisoners, do you have many of those?

A No. That is a fraction, really, as far as I can see. You have men militantly pursuing change in prison. But they would not belong to any organization.

I say you have some of these organizations outside that can't get a toehold, and they would like to see us do things that are contrary, you know, so that they can reinforce their line, which is usually the communist line, you know. But we don't have any problem with them.

Q Do you have any policy as to what you do with your most troublesome prisoners?

A We try to get them to federal prison, because they [104] have numerous penitentiaries, and the kind of security that we have only in one institution, and that is Walpole.

So far, I believe we have transferred five out of the less than five percent of the population that we would like to provide a maximum amount of security for.

Q Under your interview policy, Mr. Boone, normally to whom are the requests for interviews made? Is it to you or to the warden of each institution, or what?

A To the superintendant or the public information officer.

THE COURT: He has testified that if it is denied, if they have some question about it, it comes to him for decision. That is what he has said.

THE WITNESS: Right.

BY MR. KATZ:

Q Can you conceive of any situations in which you would deny a request for an interview?

A Yes.

Q What would those be, sir?

A If I had a man in my prison that was a federal prisoner, and this is possible, that was there for treason or something like that, or a spy, before I permitted him to have access, I would probably communicate with the director of the federal prison system. It would be rare occasions, but it would be these sensitive or international kinds of things, [105] maybe.

Q Have you ever had that situation?

A No. On the contrary, in Atlanta we did get permission to let a spy do a magazine article.

Q For him to write one himself, do you mean?

A One was written by him.

Q Would you tell the Court how many riots or other disturbances you have had at the various institutions in your system since you took office in Massachusetts?

A Yes. I had one riot at Walpole that lasted two days. And I had what I call disorders, two at Concord, that was relegated to one wing involving about a hundred men on two different occasions. And fortunately we have been able to handle all of those ourselves.

So we have had, in essence, about three situations of violence during the 11 months that I have been there.

Q Did you ever have an incident at the Framingham institution?

A We have peaceful demonstrations. We have had work stoppage demonstrations, which I consider healthy.

Q You consider helpful?

A Healthy, yes, very much so. I would much rather see a person sitting down peacefully trying to communicate than burning up stuff.

Q What form did this healthy demonstration take?

[106] A Well, let's take Framingham, for example. Here again, I might address myself to the discretion that I assigned to the superintendants to say when the press can come in. During the heat of a crisis, they have to have it.

Q Oh, do they have that discretion?

A Oh, yes, definitely. They have that discretion.

I was called down right after the Walpole riot, during the Walpole riot, to Framingham, because the superintendant and her staff were surrounded by women who wanted to communicate in her office. So we went down, and the superintendant decided that she would let them work on a program. She wanted to do a therapeutic community, and they wanted to do something more concrete. They said "We don't need therapy. We need help."

So they worked on this plan. And during the working itself, they called for a press conference. The superintendent didn't want to do it.

Q Who called for a press conference?

A The inmates. The superintendent didn't want to do it, and I did not force her to do it.

Finally, a representative that represented that area prevailed upon her to let the women have a press conference.

Q I'm sorry. Excuse me. A representative of what?

A Of that particular county, area, district—state representative.

[107] THE COURT: What you would call a congressman, is what he is talking about.

THE WITNESS: He was also head of a legislative committee on corrections. He prevailed upon her to have them receive the press. And they did. And after they had their statement before the press, they felt very proud of themselves and it was practically over.

But being women, it got to them. They liked to see themselves on television. So they tried for some more. But she cut it off.

So at Framingham and at Norfolk and at Concord, largely, we have had peaceful demonstrations, and usually, especially Concord, the press has been there when we have had these discussions among the staff, prisoners and civilians from the surrounding community.

Q So that it is your testimony, then, that this thing at Framingham went on for a long period of time after this press conference took place?

A No. I say after the press conference took place, it looked like it was practically over. They had their say to the community that they thought was getting a misinterpretation or misconception of their problems.

So when they saw it was over, they wanted others because they saw themselves on TV, and these people, you know say "I am on TV," the whole group of women. Let's do it again.

[108] Q They saw themselves on television and then another incident?

A There was no incident. They requested another press conference and we speculate that they requested

another press conference because they liked to see themselves on TV as a group, but the superintendent declined to do this. But the peaceful demonstration was over after that. They had their say to the public and it was finished.

THE COURT: This has nothing to do with what is before me. It has no relation to anything that is before me. There isn't anything before me that has anything to do with whether or not the federal prison system should or should not permit the press in at times of disturbances in the prison.

That isn't before me, and I don't understand your interest in pursuing it. I have recognized from the beginning that, obviously, in times of tension, participation of the press when there are disturbances in a prison is something that can be prohibited. That isn't involved here.

So what is the relevance of it? I do want to get the record that the Court of Appeals wants. But that isn't before us.

MR. KATZ: Well, there appeared to be a suggestion from his testimony that—

THE COURT: No. You brought up Framingham and you wanted to ask him a lot of questions about Framingham designed [109] to demonstrate that because he allowed interviews, a riot had occurred. There has been no discussion of that. That was what your inference was.

MR. KATZ: There appeared to be a suggestion that this was a result from one or two of his responses. I am just attempting to clarify that, Your Honor.

THE COURT: Why don't you ask him about it, then, instead of having an account of something that doesn't relate to it.

I would like to stay on this policy, as best I can. The policy has to do with individual interviews, unsupervised.

BY MR. KATZ:

Q I think you stated at some point during your direct testimony that your relations with the press were not always a bed of roses. Did you say that?

A That is true.

Q What did you mean by that?

A I mean that the press, some newspapers have a philosophy and what they consider a constituency, and they might ask you the situation in their direction. That is reality. We don't give up on them. We try to continue to impinge upon their philosophy in having editorial, off the record conferences, we have had many of those to try and get them to understand and put it in the proper perspective.

[110] THE COURT: Now, Mr. Katz, may I ask again: What has this got to do with the case? What has this possibly got to do with the case?

MR. KATZ: Your Honor, he made the statement on direct. I was just attempting to clarify it.

THE COURT: There were many irrelevant statements on direct that you didn't object to. And it seems to me the fact that he, like other public administrators, doesn't have a totally favorable relation with the press, that comes as no surprise to me. I don't know of any official that does, including judges. And it seems to me that all he is saying is that: "I still let the press in even though I don't agree with their editorial policy or I don't agree with their attacks on me. I am letting them in."

Of course, he has trouble with the press. Most anybody in public life does. We have been well reminded of that over the last few years.

I don't see what the relevance of that is to what I am supposed to be concerned with here.

MR. KATZ: Very well, Your Honor.

BY MR. KATZ:

Q I think in your direct testimony, Mr. Boone, while you rejected the concept of individual inmate leaders or the big wheel, you did indicate that they tended to gather coalitions to exercise the leadership role. It that what you [110-A] A What I said is that in a crisis the subgroups might tend to come together in a coalition, which means that the president or the chairman of the group may make up an executive council, and in that way a cross-section of interest and points of view can be represented to the management.

That has been the tendency in all of my institutions, except Framingham, which is a small institution, where practically all of them met and selected one person to represent them.

MR. KATZ: Thank you. We have no further questions.

REDIRECT EXAMINATION

BY MR. CALIFANO:

Q Commissioner Boone, is the Boston Strangler a big wheel in the prison he is in and a leader of the other prisoners?

A No.

Q What do they think of him?

A He is just a non-entity, almost, with them. In fact, some of them question whether or not he is in fact the Boston Strangler. They think that it could be somebody else.

Q The Government raised questions concerning the disturbance at Walpole and incidents at two or three other institutions under your jurisdiction. Were those disturbances caused by your open press policy?

A Not at all. They had no relationship to it at all.

[110-B] Q Do you think if you had had no open press, would you have had those disturbances?

A I would have had them and, perhaps, as I testified, they might have been aggravated without appropriate press response.

Q You have been at Lorton, you have been earlier in your career in the federal system in Atlanta—Lorton is part of the federal system, in a sense—and you are now Director of Corrections for the State of Massachusetts. Are you aware in view of your experience and expert knowledge, of any reasons why the federal system should be different because of the prison population or other considerations than your system is in terms of being open to the press?

A I indicated that in certain sensitive areas there should be some discretion. For example, in an international kind of situation, certainly.

Q But in terms of day to day, no riot situation, no international situation—in private interviews between media and prisoners, do you see any reason why that should be different in the federal system than it is in your state system?

A Not at all. I don't think so.

MR. CALIFANO: No further questions, Your Honor.

THE COURT: Thank you, Commissioner Boone.

MR. KATZ: May I just ask one further question?

THE COURT: Yes. I'm sorry.

[110-C]

REDIRECT EXAMINATION

BY MR. KATZ:

Q Do you have any knowledge of the federal system other than your tenure as, I think you said, you were at Atlanta?

THE COURT: And Terre Haute.

THE WITNESS: Atlanta and Terre Haute. We worked together when I was at Lorton.

MR. KATZ: No further questions.

THE COURT: You are excused, Commissioner. Thank you, sir.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: Gentlemen, I guess we better adjourn now for lunch. I have two matters at 1:45 which will take about 15 minutes. So I would anticipate we would start up again in this case at 2:00.

COUNSEL: All right, Your Honor.

THE COURT: Did you have something on your mind?

MR. CALIFANO: I was going to say, Your Honor, I have Dr. Gould here. I don't think he will take more than five minutes. I just have him on a no issue. He is a psychiatrist.

THE COURT: We have five minutes. I am willing to take five or ten minutes. But I do have a committee meeting [110-D] of other judges, so, therefore, I can't run too long.

I don't want to inconvenience the doctor. But usually when a lawyer says he has a five-minute witness, he takes half-hour. I don't mean any reflection on you or Mr. Katz, but that is generally the way it works out.

So I think we better wait until 2:00.

MR. KATZ: If I may, Your Honor, I would just like to take up one problem at this point, which is about one of our witnesses we have to have testify today because he is going back to Florida tomorrow morning. That is the only flight we could get out for him.

THE COURT: We ought to put him on out of turn and let him testify. We have got holiday problems all around.

MR. CALIFANO: Your Honor, the only witness we have is Dr. Gould and, possibly, Mr. Carlson, and we can put Dr. Gould on and then put him on later in the day. I would like to get Dr. Gould on.

THE COURT: You have Mr. Leland?

MR. CALIFANO: Yes, Your Honor.

THE COURT: I don't want to inconvenience anybody more than I have to. 2:00 in this case. 1:45 otherwise.

(Luncheon recess taken at 12:30 p.m.)